

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION  
4

5 -----x  
6 IN RE: NATIONAL PRESCRIPTION ) Case No.  
7 OPIATE LITIGATION ) 1:17-MD-2804  
8 APPLIES TO ALL CASES ) Hon. Dan A. Polster  
9 -----x

10  
11  
12

VIDEOTAPED DEPOSITION OF GARY L. BOGGS

13

WASHINGTON, D.C.

14

THURSDAY, JANUARY 17, 2019

15

9:07 A.M.

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23 Pages: 1 - 429

24 Reported by: Leslie A. Todd

1           Deposition of GARY L. BOGGS, held at the law  
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13           Pursuant to notice, before Leslie Anne Todd,  
14   Court Reporter and Notary Public in and for the  
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16   administering the oath to the witness.

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1 P R O C E E D I N G S

2 -----

3 THE VIDEOGRAPHER: We are now on the  
4 record. My name is Daniel Holmstock. I'm the  
5 videographer for Golkow Litigation Services.  
6 Today's date is January 17th, 2019. The time on  
7 the video screen is 9:07 a.m.

8 This video deposition is being held at  
9 the law offices of Covington & Burling LLP at One  
10 City Center, 850 10th Street, Northwest, in  
11 Washington, D.C., in the matter of In Re:  
12 National Prescription Opiate Litigation, pending  
13 before the United States District Court for the  
14 Northern District of Ohio, Eastern Division.

15 Our deponent today is Mr. Gary Boggs.  
16 Counsel will be noted on the  
17 stenographic record for appearances.

18 The court reporter is Leslie A. Todd,  
19 who will now administer the oath to the witness.

20 GARY L. BOGGS,

21 and having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. HAWAL:

1 Q Good morning, Mr. Boggs.

2 A Good morning.

3 Q Please tell us your full name.

4 A Gary Lee Boggs.

5 Q Mr. Boggs, you've given depositions  
6 before?

7 A I have.

8 Q Approximately how many times?

9 A Dozens of times throughout my career.

10 Q All right. You understand that you're  
11 testifying as if you would be in front of a judge  
12 and a jury this morning?

13 A I do.

14 Q All right. What have you done to  
15 prepare yourself for this deposition today?

16 A I've had meetings with counsel in  
17 preparation for it.

18 Q How many meetings?

19 A There was about four.

20 Q All right. And how long were those  
21 meetings? How much time total did you spend with  
22 counsel?

23 A I didn't keep track of it. I mean it  
24 was four days.

1 Q Approximately.

2 A Approximately six, seven hours a day  
3 times four.

4 Q And have you reviewed any deposition  
5 transcripts that have been taken in this case of  
6 other witnesses?

7 A I have not.

8 Q Okay. What is your current position  
9 with McKesson?

10 A I am Vice President of Regulatory  
11 Affairs and Compliance.

12 Q And how long have you had that position?

13 A Since August of last year.

14 Q And can you tell me what your job  
15 responsibilities are or a description of what --  
16 what you do, what your role is?

17 A Sure. I'm responsible for overseeing  
18 the controlled substance monitoring program at  
19 McKesson for the independent small, medium chain  
20 pharmacies, hospitals, veterans, government  
21 accounts, and overseeing a team that implements  
22 that program across the United States.

23 Q Who do you report to?

24 A I report to Barbara Rowland, who is the

1 senior vice president of Regulatory Affairs and  
2 Compliance.

3 Q And prior to the current position that  
4 you hold, what position did you have at McKesson?

5 A I was a senior director of Regulatory  
6 Affairs for the East region.

7 Q And over what period of time did you  
8 hold that position?

9 A From late November of 2013 until August  
10 of 2018.

11 Q And is that when you started with  
12 McKesson, in late 2013?

13 A In late November 2013, yes.

14 Q And what was your job responsibility as  
15 senior director of Regulatory Affairs for the East  
16 region?

17 A It's similar to what it is now, except I  
18 covered only half of the United States, the  
19 eastern half of the United States.

20 Q Would I understand your job  
21 responsibility to have been, for the entire time  
22 that you've been with McKesson, to see to it that  
23 McKesson complies with the federal laws and  
24 regulations which exist in an effort to prevent

1 the diversion of controlled substances outside of  
2 the legal framework or legal channels?

3 MR. STANNER: Object to the form.

4 THE WITNESS: I believe that that's part  
5 of the responsibilities, yes.

6 BY MR. HAWAL:

7 Q As I understand it, before you joined  
8 McKesson in 2013, you were an employee of the Drug  
9 Enforcement Administration, the DEA?

10 A I was.

11 Q All right. Over what period of time  
12 were you with the DEA?

13 A From approximately June of 1985 until  
14 the end of June 2012.

15 Q And starting in June of 1985, I'm going  
16 to ask you to take us through what positions you  
17 held with the DEA. Can you tell us what your  
18 position was when you first started and what your  
19 responsibilities were?

20 A Sure, I'd be happy to.

21 I became a special agent with the Drug  
22 Enforcement Administration in 1985, was  
23 transferred from Orlando, Florida, to Detroit. I  
24 was a special agent in the Detroit office until

1     about March of 1999, when I was promoted to a  
2     group supervisor in Detroit. I --

3             Q     Excuse me, if I can interrupt for a  
4     minute.

5                     Up through March of 1999, did you have  
6     any responsibilities in dealing with manufacturers  
7     or distributors of controlled substances?

8             A     Not very much, no. Very little.

9             Q     So you stopped at March of 1999. Can  
10    you continue and take us forward with your  
11    positions with the DEA.

12            A     Sure. I was a group supervisor  
13    beginning around March of 1999. I oversaw as a  
14    group supervisor two or three different units.  
15    Then I was a unit chief, also in Detroit, over the  
16    special services section.

17                     I was then transferred to headquarters  
18    here in the District in 2003. I was a unit chief  
19    in the Office of Special Intelligence. Was then  
20    promoted in January of 2006 to be the executive  
21    assistant in the Office of Diversion Control, and  
22    I held that position until I retired from the DEA  
23    in June of 2012.

24            Q     All right. And as executive assistant

1 in the division of -- what -- what was that again?

2 What --

3 A At the time it was called the Office of  
4 Diversion Control. It's now the Diversion Control  
5 Division.

6 Q And what were your responsibilities in  
7 that position?

8 A My responsibilities were, I would sort  
9 of say like a chief of staff to the person  
10 overseeing that section. We had day-to-day  
11 responsibilities for the implementation of the  
12 regulatory aspect of the Controlled Substances  
13 Act, overseeing the DEA registrants that were  
14 authorized to handle controlled substances.  
15 That's essentially it.

16 Q And the DEA registrants that you're  
17 referring to would be wholesalers like McKesson?

18 A That's one example of them.

19 Q Another would be manu- --

20 (Interruption by counsel on the phone.)

21 Q Another would --

22 MR. HAWAL: Can we please have people on  
23 the phone mute their lines?

24 (A discussion was held off the record.)

1 MR. HAWAL: Yeah, let's go off the  
2 record.

3 THE VIDEOGRAPHER: The time is 9:15 a.m.  
4 We're going off the record.

5 (Resolving technical difficulties.)

6 THE VIDEOGRAPHER: The time is 9:20 a.m.  
7 We're back on the record.

8 MR. HAWAL: Bill Hawal for plaintiffs.

9 MR. RAFFERTY: Troy Rafferty for  
10 plaintiffs.

11 MR. WOLFE: Evan Wolfe, technical  
12 support, for plaintiffs.

13 MS. KASWAN: Beth Kaswan for plaintiffs  
14 in the Massachusetts state action.

15 MR. LIVINGSTON: Scott Livingston for  
16 Defendant HPC.

17 MR. BUSHUR: Joseph Bushur for Cardinal  
18 Health.

19 MR. PERRY: Stan Perry of Reed Smith for  
20 AmerisourceBergen.

21 MR. SATIN: Michael Satin for Miller &  
22 Chevalier on behalf of Gary Boggs.

23 MS. MONAGHAN: Meghan Monaghan from  
24 Covington & Burling on behalf of McKesson.

1 MR. STANNER: Andrew Stanner of  
2 Covington & Burling on behalf of McKesson.

3 MR. HAWAL: Folks on the phone, can you  
4 please identify yourselves?

5 MR. WIENER: This is Seth Wiener from  
6 Arnold & Porter for Endo and PAR defendants.

7 MS. WINCKEL: Emilie Winckel from  
8 O'Melveny for Janssen and J&J.

9 MR. BRODSKY: Richard Brodsky from Jones  
10 Day for Walmart.

11 MS. ROSENTHAL: Amanda Rosenthal --

12 MR. HAWAL: One at a time, please.

13 THE REPORTER: Amanda --

14 MS. ROSENTHAL: Rosenthal.

15 MR. HAWAL: For whom?

16 MS. ROSENTHAL: C&R Pharmacy.

17 MR. HAWAL: Anyone else?

18 MS. LIFTON: Diane Lifton, Hughes  
19 Hubbard, for UCB.

20 THE REPORTER: Can you repeat your name,  
21 please?

22 MS. LIFTON: Diane Lifton, L-I-F-T-O-N.

23 THE REPORTER: Thank you.

24 BY MR. HAWAL:

1           Q     Mr. Boggs, before we went off the  
2     record, I believe that you mentioned that you  
3     joined DEA's Office of Diversion Control in  
4     January of 2006; is that correct?

5           A     That's correct, yes.

6           Q     And were you -- in that position, were  
7     you responsible for interacting with wholesalers  
8     and manufacturers of controlled substances?

9           A     I was.

10          Q     And was part of your job responsibility  
11     to ensure that they were complying with the  
12     Controlled Substances Act and federal laws and  
13     regulations relating to controlled substances?

14          A     It was.

15          Q     All right. And was your direct  
16     supervisor Mr. Rannazzisi?

17          A     He was.

18          Q     And how long was he your direct  
19     supervisor?

20          A     The entire -- from 2000 -- January 2006  
21     till I retired in June of 2012.

22          Q     Before you became an employee of  
23     McKesson in late 2013, was there a period of time  
24     that you were a consultant for McKesson?

1           A     I consulted for McKesson just for a  
2     couple of times prior to becoming an employee of  
3     McKesson, yes.

4           Q     And over what period of time did that  
5     occur?

6           A     It would have been, I believe, around  
7     the summer of 2013, on and off a couple of times.

8           Q     And what did -- what was your role --  
9     what did you -- what were you doing or what were  
10    you asked to do as a consultant for McKesson?

11          A     I was asked to look at the Regulatory  
12    Affairs program that they had. I was asked to  
13    provide some training. I was asked to speak at a  
14    couple of different conferences that McKesson had  
15    put on for other folks outside of McKesson.

16          Q     And who at -- who at McKesson recruited  
17    you or retained you to be a consultant?

18          A     Don Walker.

19          Q     Did you know Don Walker prior to that  
20    time? Were you acquainted with him in any way?

21          A     I might have -- in my capacity at DEA,  
22    may have been at a meeting that he was at, but  
23    other than that, I did not know him.

24          Q     And who was it that encouraged you or

1 recruited you as an employee to join McKesson in  
2 2013?

3 MR. STANNER: Objection. Form.

4 THE WITNESS: They advertised a  
5 position, and I talked to Don Walker about it.

6 BY MR. HAWAL:

7 Q When you were with the DEA, did you  
8 always try to fairly and accurately set forth the  
9 policies and positions of the DEA in your  
10 communications with pharmaceutical distributors  
11 and their trade association, HDMA?

12 MR. SATIN: Mr. Boggs, I'm going to  
13 instruct you not to answer that question to the  
14 extent doing so would require you to disclose  
15 information you acquired while you were at DEA --  
16 at the DEA, to the extent that information is not  
17 public and part of your official responsibilities  
18 and duties.

19 BY MR. HAWAL:

20 Q Will you answer the question, sir?

21 A I -- I did not receive clearance from  
22 the government to speak while I was there, so I  
23 don't believe that I can answer that question.

24 Q Is it your position that your

1 interactions with various distributors is in some  
2 way confidential information?

3 MR. SATIN: Objection. Sir, it's not  
4 his decision to make.

5 MR. HAWAL: I under- --

6 MR. SATIN: It's the government's  
7 decision to make, so it's not a question for him.  
8 He doesn't have authorization to speak. The  
9 government can't be here. So he can't provide  
10 those answers until the government gives him  
11 clearance to do so.

12 MR. HAWAL: Well, the government -- the  
13 government's position, as I understand it and as  
14 was expressed at the time of a conference with the  
15 court, is that if there is information that was in  
16 the public domain, that the witness is permitted  
17 to provide answers to those kinds of questions.

18 Is that -- is your understanding  
19 different?

20 MR. SATIN: If it is public information,  
21 that's correct. Your question, as I understood  
22 it, was not calling for just public information.

23 BY MR. HAWAL:

24 Q Well, sir, what is your understanding

1 of -- of what HDMA was?

2 A HDMA is a trade association for  
3 manufacturers and distributors.

4 Q And is it your understanding that the  
5 HDMA had periodic meetings where representatives  
6 of various pharmaceutical distributors of  
7 controlled substances would attend?

8 MR. SATIN: You may answer that question  
9 to the extent doing so would not require you to  
10 disclose non-public information that you acquired  
11 during the course of your employment.

12 THE WITNESS: It's my understanding that  
13 they would have those types of meetings, yes.

14 BY MR. HAWAL:

15 Q And those meetings would also be  
16 attended by employees or representatives of HDMA,  
17 the trade association?

18 MR. STANNER: Object to the form of the  
19 question. Vague, time frame.

20 THE WITNESS: Could you be more  
21 specific?

22 BY MR. HAWAL:

23 Q During the time that you were with the  
24 Office of Diversion Control, would meetings that

1 would be attended by pharmaceutical manu- --  
2 pharmaceutical distributor representatives also be  
3 attended by employees or representatives of HDMA?

4 A They may have, and other times they may  
5 not have.

6 Q Did you attend such meetings?

7 MR. SATIN: Mr. Boggs, I'm going to  
8 instruct you not to answer that question for the  
9 same reasons we expressed earlier.

10 MR. HAWAL: The HDMA would indicate --  
11 attendance at meetings of HDMA would indicate that  
12 that's public information. There's -- there's  
13 nothing that's confidential about HDMA as it  
14 relates to Mr. Boggs, is there?

15 MR. SATIN: I don't know.

16 The instruction to Mr. Boggs is,  
17 Mr. Boggs, to the extent he believes that it was  
18 public information, he can answer it. To the  
19 extent the information -- he's revealing  
20 information that's not public, he can't.

21 BY MR. HAWAL:

22 Q Mr. Boggs, when you attended meetings  
23 with the HDMA, did you consider those -- that  
24 information to be generally public?

1           A       I did not, no.

2           Q       In terms of your work with the Office of  
3    Diversion Control, did you attend public meetings  
4    where you set forth the positions of the DEA -- of  
5    the DEA with respect to maintaining appropriate  
6    obligations under the Controlled Substances Act?

7           A       I believe that I did speak at some  
8    public conferences about the Drug Enforcement  
9    Administration and the regulatory requirements.

10          Q       And its positions with regard to the  
11   obligations of wholesalers like McKesson to  
12   maintain appropriate legal obligations with  
13   respect to avoiding the diversion of controlled  
14   substances?

15          A       In some form of that, yes.

16          Q       And would those be meetings in which or  
17   presentations in which HDMA members and/or  
18   representatives of drug wholesalers like McKesson  
19   would also be in attendance at?

20          A       I don't recall whether or not any of  
21   those representatives were in attendance or not.

22          Q       When you were with the Office of  
23   Diversion Control, were you required to know what  
24   the legal obligations of pharmaceutical

1 distributors were with regard to their compliance  
2 with federal laws and regulations?

3 MR. SATIN: Objection.

4 Mr. Boggs, don't answer that question to  
5 the extent it would require you to disclose  
6 non-public information that you have obtained in  
7 the course of your work at DEA.

8 BY MR. HAWAL:

9 Q Do you -- do you refuse to answer, sir?

10 A I am -- do not want to break the law, so  
11 I don't -- I have not been cleared to answer  
12 non-public information.

13 Q Well, sir, do you have knowledge about  
14 the substance of the Controlled Substances Act?

15 MR. SATIN: To the extent that knowledge  
16 comes from your time at the DEA, don't answer  
17 that.

18 If you want to ask him about his time at  
19 McKesson and his knowledge of those laws, you may  
20 do so.

21 THE WITNESS: I -- from my time at  
22 McKesson, I am aware of what some of the  
23 regulatory obligations are, yes.

24 BY MR. HAWAL:

1           Q     Were those regulatory obligations that  
2     you became aware of when -- since you've been with  
3     McKesson, were they the same obligations that  
4     existed prior to that time as -- as to the period  
5     of time that you were with the DEA?

6                     MR. SATIN: That question necessarily  
7     calls for his knowledge when he was at DEA, so  
8     object.

9                     Don't answer that question.

10                    MR. STANNER: Object to the form.

11                    THE WITNESS: For the most part, I  
12     believe they are. There have been some recent  
13     legislative changes to some of the regulatory  
14     obligations.

15     BY MR. HAWAL:

16           Q     The regulatory obligations that apply to  
17     distributors of controlled substances were created  
18     with the Controlled Substances Act in 1970; is  
19     that correct?

20           A     Approximately that time, yes.

21           Q     And up until the time of recent changes  
22     in the law as a result of Congressional action,  
23     have the obligations under the Controlled  
24     Substances Act been fairly consistent and uniform

1 since 1970?

2 MR. STANNER: Objection to the form.

3 THE WITNESS: To the best of my  
4 knowledge, the regulatory obligations as written  
5 in the 21 CFR have not changed.

6 BY MR. HAWAL:

7 Q Are you familiar with the Distributor  
8 Initiative Program?

9 MR. SATIN: To the extent that your  
10 knowledge comes from your time with the DEA, don't  
11 answer that question.

12 THE WITNESS: I am familiar with the  
13 Distributor Initiative in general, yes.

14 BY MR. HAWAL:

15 Q And are you familiar with the purpose of  
16 the Distributor Initiative Program?

17 A I don't believe that I'm cleared to  
18 answer that question.

19 Q What is your understanding as to when  
20 the opioid crisis was first appreciated in the  
21 United States?

22 A I believe that it began approximately  
23 three decades ago.

24 Q And is it your understanding that the

1     opioid crisis since that time has consistently  
2     worsened in terms of its effect on individuals as  
3     well as communities and governmental entities in  
4     the United States?

5                     MR. STANNER:   Object to the form.

6                     THE WITNESS:   I believe that that is an  
7     accurate representation.

8     BY MR. HAWAL:

9             Q       Were you aware that Mr. Rannazzisi sent  
10    a letter to all distributors in the United States  
11    on September 27th, 2006?

12                    MR. SATIN:   Objection to the extent that  
13    calls for --

14                    THE REPORTER:   I'm sorry, Counsel, can  
15    you speak up a little bit?

16                    MR. SATIN:   Yeah, I'm sorry.

17                    Objection to the question.

18                    And I instruct Mr. Boggs not to answer  
19    that question insofar as it requires him to  
20    disclose information about his time when he was at  
21    the DEA.

22                    THE WITNESS:   I'm aware that that --  
23    that letter's -- that the distributors have that  
24    letter, yes.

1 BY MR. HAWAL:

2 Q All right. And what is your  
3 understanding as to the purpose of  
4 Mr. Rannazzisi's letter?

5 MR. SATIN: Objection.

6 Mr. Boggs, don't answer that question.

7 MR. HAWAL: Counsel, we've already taken  
8 Mr. Boggs' deposition and he answered questions  
9 about that letter in some detail earlier this  
10 year. Is it your position that something has  
11 changed since his last deposition?

12 MR. SATIN: Yes, I've spoken to the  
13 government -- I spoke to Mr. Bennett yesterday,  
14 and he made very clear that he should not be  
15 answering questions about his time at the DEA for  
16 information that is non-public and as part of his  
17 official duties without authorization from the  
18 government.

19 So I wasn't at that hearing, but I can  
20 tell you that Mr. Boggs does not have  
21 authorization to do that.

22 MR. HAWAL: Let's take a break.

23 THE VIDEOGRAPHER: The time is  
24 9:35 a.m., and we're going off the record.

1 (Recess.)

2 THE VIDEOGRAPHER: The time is 9:53 a.m.

3 We're back on the record.

4 (Plaintiffs' Exhibit No. 1 was

5 marked for identification.)

6 BY MR. HAWAL:

7 Q Mr. Boggs, I'm going to hand you what

8 we've marked as Plaintiffs' Exhibit 1.

9 Plaintiffs' Exhibit 1 is the

10 September 27th, 2006 Department of Justice, Drug

11 Enforcement Administration letter to McKesson,

12 correct?

13 A It is. It's a generic letter. I

14 don't -- I don't know if this specific one was to

15 McKesson.

16 Q And since you've joined McKesson, have

17 you seen this letter since you've joined McKesson?

18 A I have.

19 Q And do you know since you've joined

20 McKesson that this letter was sent to every

21 distributor by Mr. Rannazzisi in September of

22 2006?

23 MR. STANNER: Object to the form.

24 THE WITNESS: I believe that that's

1 correct, yes.

2 BY MR. HAWAL:

3 Q All right. In fact, in the first  
4 paragraph, Mr. Rannazzisi indicates that this  
5 letter is being sent to every commercial entity in  
6 the United States registered with the Drug  
7 Enforcement Administration to distribute  
8 controlled substances, correct?

9 A You've read that correctly, yes.

10 Q All right. And you know since you've  
11 seen this letter that Mr. Rannazzisi, his  
12 intention was to reiterate to the distributors,  
13 including McKesson, the responsibilities of  
14 controlled substance distributors in view of the  
15 prescription drug abuse problem in our nation --  
16 our nation currently faces, correct?

17 MR. STANNER: Object to the form.

18 THE WITNESS: I believe you would have  
19 to ask him about his intention. I --

20 BY MR. HAWAL:

21 Q Well, when was the first time that you  
22 saw this letter?

23 MR. SATIN: Objection, pursuant to  
24 Touhy.

1 THE REPORTER: Pursuant to?

2 MR. STANNER: Touhy, T-U-O-H-Y, I  
3 believe is the correct spelling.

4 MR. STANNER: T-O-U. O-U.

5 MR. SATIN: T-O-U-H-Y.

6 THE WITNESS: I'm sorry, I don't know  
7 that I can answer that question.

8 BY MR. HAWAL:

9 Q How long have you been aware that  
10 controlled prescription drugs, that their abuse is  
11 a serious and growing health problem in the United  
12 States?

13 MR. STANNER: Object to the form.

14 THE WITNESS: I know that prescription  
15 drug abuse has been around for decades and  
16 decades.

17 BY MR. HAWAL:

18 Q And you know that it continually  
19 worsened over time?

20 MR. STANNER: Object to the form.

21 THE WITNESS: I believe that's correct,  
22 yes.

23 BY MR. HAWAL:

24 Q Now, since you've joined McKesson, did

1     you know that distributors must be vigilant in  
2     deciding whether a prospective customer can be  
3     trusted to deliver controlled substances only for  
4     lawful purposes?

5                     MR. STANNER: Object to the form.

6                     THE WITNESS: I can't speak for all  
7     distributors. For -- for McKesson, I understand  
8     that we have an obligation to maintain control.

9     BY MR. HAWAL:

10            Q     And do you understand that that  
11     responsibility is critical?

12            A     I understand that --

13                     MR. STANNER: Object to the form.

14                     THE WITNESS: -- it's very important,  
15     yes.

16     BY MR. HAWAL:

17            Q     Mr. Rannazzisi in his letter in the  
18     third paragraph in the last sentence indicated  
19     that: "This responsibility is critical, as  
20     Congress has expressly declared that the illegal  
21     distribution of controlled substances has a  
22     substantial and detrimental effect on the health  
23     and general welfare of the American people."

24                     Is it your understanding as a McKesson

1 employee that that is a true statement?

2 A I believe that that's a true statement,  
3 yes.

4 Q And have you known since you joined  
5 McKesson that, as Mr. Rannazzisi indicates in the  
6 next paragraph: "Although most distributors are  
7 already well aware of the following legal  
8 principles, they are reiterated here as additional  
9 background for this discussion"?

10 Did you know that he was reiterating  
11 what distributors should have known as of 2006  
12 based upon your work at McKesson?

13 MR. STANNER: Object to the form.

14 MR. SATIN: Objection that -- as I  
15 understand the question, even though you're  
16 asking as -- at McKesson, you're asking him to  
17 talk about what he understood Mr. Rannazzisi --  
18 I'm not pronouncing his name correctly -- but what  
19 that gentleman was doing as of 2006.

20 So I would instruct you not to answer  
21 that to the extent the answer requires you to  
22 disclose information from that time period.

23 THE WITNESS: I -- you'd have to ask  
24 his -- him what his intent was.

1 BY MR. HAWAL:

2 Q Let's go to page 2 of this letter.

3 In the second paragraph, Mr. Rannazzisi  
4 says: "Even just one distributor that uses its  
5 DEA registration to facilitate -- facilitate  
6 diversion can cause enormous harm."

7 As an employee of McKesson with your --  
8 based on your current knowledge, do you agree with  
9 that statement?

10 A I -- I think that you would have to look  
11 at the facts and circumstances of what -- whatever  
12 the incident was and to the extent of whether or  
13 not it was horrific or not.

14 Q Well, let's assume for the sake of my  
15 question that a distributor fails to report  
16 suspicious orders or block orders that are  
17 suspicious and delivers them to a customer.

18 Do you believe, based upon your current  
19 understanding of federal laws, regulations and how  
20 the distribution of controlled substances work,  
21 that just one distributor that facilitates  
22 diversion can cause enormous harm?

23 MR. STANNER: Object to the form,  
24 compound, vague.

1                   THE WITNESS: I think the first part of  
2   your statement was about failure to report a  
3   suspicious order. That's a reporting requirement.  
4   And it -- you may be assuming that that order was  
5   shipped and maybe it wasn't shipped.

6                   The other second part of that is  
7   assuming that even if it was shipped, that it  
8   somehow may or may not have been diverted.

9   BY MR. HAWAL:

10               Q     Well, let's assume it was diverted. If  
11   it was diverted, do you agree that that would  
12   cause or could cause enormous harm?

13               MR. STANNER: Object to the form.

14               THE WITNESS: It depends on the facts  
15   and circumstances. I mean you could have one  
16   shipment that might be a hundred pills that could  
17   be diverted -- that could be diverted and simply  
18   cause some harm. Whether or not that's, quote,  
19   enormous harm, I think is relevant to the fact of  
20   the volume of what was shipped.

21   BY MR. HAWAL:

22               Q     Well, so -- so in your -- in your  
23   opinion, volume matters?

24               A     It could matter. It depends on the

1 facts and circumstances.

2 Q Well, assuming sufficient volume  
3 diverted into elicited channels, do you believe that  
4 that could cause enormous harm as set forth in  
5 Mr. Rannazzisi's letter?

6 MR. STANNER: Object to the form.

7 THE WITNESS: It could.

8 BY MR. HAWAL:

9 Q And what kind of harm would you  
10 contemplate could be caused by diversion?

11 A If people illegally took it, they could  
12 become addicted from it or any other consequences  
13 associated with that.

14 Q Including harms to communities?

15 MR. STANNER: Object to the form.

16 THE WITNESS: I -- I wouldn't want to  
17 speculate without more facts, and I -- you would  
18 have to look at the facts and circumstances.

19 BY MR. HAWAL:

20 Q Well --

21 A I don't want to paint with a broad  
22 brush.

23 Q Well, hypothetically, if diversion  
24 occurs in sufficient quantities, do you agree,

1 based upon your understanding from your work at  
2 McKesson in the diversion arena, that that can  
3 cause harm to communities?

4 A It could cause harm in there. It  
5 depends.

6 Q And could cause harm to governmental  
7 agencies?

8 MR. STANNER: Object to the form.

9 THE WITNESS: I -- you'd have to be more  
10 specific.

11 BY MR. HAWAL:

12 Q Well, increased costs for treatment of  
13 individuals who are addicted, for example?

14 MR. STANNER: Object to the form.  
15 Speculation.

16 THE WITNESS: That may be a consequence  
17 of someone becoming addicted, that they need to  
18 seek treatment. Whether or not that was directly  
19 related to the diversion of that or something that  
20 they had legitimately, I think you'd have to look  
21 at the facts.

22 BY MR. HAWAL:

23 Q To -- in the -- continue on --  
24 continuing on in Mr. Rannazzisi's letter in 2006,

1 he says: "The DEA regulations require all  
2 distributors to report suspicious orders of  
3 controlled substances."

4 Based upon your understanding of -- of  
5 the federal laws and regulations as a McKesson  
6 employee, is that a true statement?

7 A The regulations do require distributors  
8 to build and operate a system to identify and  
9 report suspicious orders.

10 Q And how long has that been the case?

11 A I believe --

12 MR. SATIN: Objection to the extent that  
13 requires you to rely on your work when you were at  
14 the DEA.

15 THE WITNESS: It's my understanding that  
16 that was a regulation that was implemented with  
17 the enactment of the Controlled Substances Act.

18 BY MR. HAWAL:

19 Q In 1970?

20 A Around that time frame, yes.

21 Q At -- from your work at McKesson, did  
22 you know that at the time that this letter was  
23 sent, the DEA was actively investigating McKesson  
24 for violations of the Controlled Substances Act?

1 MR. STANNER: Objection to the form.

2 THE WITNESS: Could you -- could you  
3 repeat the question?

4 BY MR. HAWAL:

5 Q Yes. As an employee of McKesson, do you  
6 know that at the time this letter was sent, the  
7 DEA and the DOJ was actively investigating  
8 McKesson for violations of the Controlled  
9 Substances Act for failing to maintain effective  
10 controls against diversion of certain  
11 pharmaceutical opioid products?

12 MR. SATIN: And objection.

13 You can't rely, though, on your time at  
14 the DEA to answer that question, so it would only  
15 be based on information you obtained while at  
16 McKesson.

17 MR. STANNER: Object to the form, calls  
18 for speculation.

19 THE WITNESS: I believe that that was  
20 the case, yes.

21 BY MR. HAWAL:

22 Q Did you bring with you when you joined  
23 McKesson your wealth of knowledge that you gained  
24 as a DEA agent, and do you use that knowledge in

1 your current position and employment?

2 A I use my experiences gained from there,  
3 yes.

4 Q I assume that's why McKesson retained  
5 you, for your knowledge and experience as a DEA  
6 agent. True?

7 A I think that that's partially accurate,  
8 yes.

9 MR. HAWAL: Evan, can we bring up 910,  
10 Bates, the second Rannazzisi letter.

11 (Plaintiffs' Exhibit No. 2 was  
12 marked for identification.)

13 BY MR. HAWAL:

14 Q Mr. Boggs, I'm handing you what has been  
15 marked as Exhibit 2 is a U.S. Department of  
16 Justice, Drug Enforcement Administration letter to  
17 McKesson Corporation, dated December 27th, 2007,  
18 signed by Joseph Rannazzisi. Bates No.  
19 MCKMDL00478910.

20 Have you seen this letter since you've  
21 left the DEA?

22 A The copy that I have is not a complete  
23 document. Only -- only one page.

24 MR. STANNER: Oh, sorry. What -- some

1 of these look like they're double-sided. This one  
2 is not. The actual exhibit is not.

3 MR. HAWAL: Well, can you peel that off?

4 MR. STANNER: I can. Lucky break.

5 BY MR. HAWAL:

6 Q Have you seen this letter since you've  
7 left the DEA?

8 A I have.

9 Q And Mr. Rannazzisi apparently in  
10 December of 2007 thought it was necessary to send  
11 McKesson and other distributors a second reminder  
12 of their legal obligations under the Controlled  
13 Substances Act and federal regulations.

14 MR. SATIN: Object --

15 BY MR. HAWAL:

16 Q True?

17 MR. SATIN: Objection.

18 Do not answer that question.

19 MR. STANNER: Object to the form.

20 BY MR. HAWAL:

21 Q The first paragraph of the letter  
22 indicates that: "The purpose of this letter is to  
23 reiterate the responsibilities of controlled  
24 substance manufacturers, distributors -- and

1 distributors to inform DEA of suspicious orders in  
2 accordance with 21 CFR 1301.74(b)."

3 Is it your understanding that that  
4 obligation exists today based upon your work at  
5 McKesson?

6 A It is.

7 Q And existed as far back as 1970?

8 A That's correct.

9 Q And according to Mr. Rannazzisi, the DEA  
10 regulations require all manufacturers and  
11 distributors to report suspicious orders of  
12 controlled substances.

13 That's a true statement, accurate?

14 A That's what the regulation requires,  
15 yes.

16 Q And he goes on to say: "It specifically  
17 requires that a registrant," quote, "design and  
18 operate a system to disclose to the registrant  
19 suspicious orders of controlled substances," close  
20 quote.

21 Is it your understanding that that's an  
22 accurate statement?

23 A That's what the regulation says, yes.

24 Q And he goes on to say: "The regulations

1 clearly indicates that it is the sole  
2 responsibility of the registrant to design and  
3 operate such a system."

4 Do you agree with that statement?

5 A That's what the regulation requires,  
6 yes.

7 Q He goes on in the next paragraph to say  
8 that: "The regulation also requires that the  
9 registrant inform the local DEA division office of  
10 suspicious orders when discovered by the  
11 registrant," and he emphasized the words "when  
12 discovered."

13 Is that an accurate statement as to what  
14 the regulations require?

15 A I believe that's what the regulations  
16 require, yes.

17 Q And he goes on to say in that paragraph:  
18 "Registrants are reminded that their  
19 responsibility does not end merely with the filing  
20 of a suspicious order report. Registrants must  
21 conduct an independent analysis of suspicious  
22 orders prior to completing a sale to determine  
23 whether the controlled substances are likely to be  
24 diverted from legitimate channels."

1 Is that an accurate statement --

2 MR. STANNER: Object --

3 BY MR. HAWAL:

4 Q -- based upon your work at McKesson?

5 MR. STANNER: Object to the form.

6 Vague.

7 THE WITNESS: I don't know that that's

8 specifically in the regulation.

9 BY MR. HAWAL:

10 Q Well, do you agree that that's an  
11 accurate statement?

12 MR. STANNER: Object to the form.

13 THE WITNESS: I believe that part of

14 McKesson's regulatory program encompasses due

15 diligence that we conduct on our customers.

16 BY MR. HAWAL:

17 Q In the next paragraph he goes on to say  
18 that: "The regulation specifically states that  
19 suspicious orders include orders of an unusual  
20 size, orders deviating substantially from a normal  
21 pattern, and orders of an unusual frequency."

22 Is that a fair and accurate statement?

23 A I believe that is what the regulations  
24 require.

1           Q     And he goes on to say that:  "The size  
2     of an order alone, whether or not it deviates from  
3     a normal pattern, is enough to trigger the  
4     registrant's responsibility to report the order as  
5     suspicious."

6                     Do you agree with that statement as  
7     being accurate?

8                     MR. STANNER:  Object to the form.

9                     THE WITNESS:  I believe that that could  
10    be part of the analysis in determining whether or  
11    not the order is of unusual size or deviating  
12    substantially from a pattern or unusual frequency.

13    BY MR. HAWAL:

14           Q     As a -- as a McKesson employee, do you  
15    believe that that is one of the responsibilities  
16    of a distributor in -- in terms of performing its  
17    due diligence?

18                     MR. STANNER:  Object to the form, vague.

19                     THE WITNESS:  I believe our  
20    responsibility is to design and operate a system  
21    to disclose suspicious orders as defined in the  
22    regulations.

23    BY MR. HAWAL:

24           Q     Well, do you believe that an order that

1 deviates from a normal pattern should trigger a  
2 responsibility to determine whether the order is  
3 suspicious?

4 MR. STANNER: Object to the form.

5 THE WITNESS: That is one of the  
6 definitions of "a suspicious order" under the  
7 regulations.

8 BY MR. HAWAL:

9 Q On page 2 of this letter in the second  
10 paragraph, Mr. Rannazzisi states: "Daily, weekly  
11 or monthly reports submitted by a registrant  
12 indicating," quote, "excessive purchases," close  
13 quote, "do not comply with the requirement to  
14 report suspicious orders, even if the registrant  
15 calls such reports suspicious order reports."

16 Do you agree that that is an accurate  
17 statement as you understand it from your work at  
18 McKesson?

19 MR. STANNER: Object to the form.

20 THE WITNESS: Well, it depends on what  
21 those orders were that were contained in the --  
22 what they -- what's defined as "an excessive  
23 order." An excessive order could be an order of  
24 unusual size, frequency or pattern, and therefore

1 would be a suspicious order as defined under the  
2 regulations.

3 BY MR. HAWAL:

4 Q In the next paragraph, he says:

5 "Lastly, registrants that routinely report  
6 suspicious orders, yet fill these orders without  
7 first determining that the order is not being  
8 diverted into other than legitimate medical,  
9 scientific and industrial channels may be failing  
10 to maintain effective controls against diversion."

11 Do you agree that that is an accurate  
12 statement as set forth by Mr. Rannazzisi?

13 MR. STANNER: Object to the form.

14 THE WITNESS: The -- at my time at  
15 McKesson, my understanding is that a registrant  
16 such as distributors have an obligation to  
17 maintain effective controls against diversion.

18 BY MR. HAWAL:

19 Q And so you agree that that's an accurate  
20 statement?

21 MR. STANNER: Object to the form.

22 Vague, "accurate."

23 THE WITNESS: I think it describes, at  
24 least in part, what could be a review or a due

1 diligence that is conducted to determine whether  
2 or not something might be diverted.

3 BY MR. HAWAL:

4 Q Are you -- do you disagree with that  
5 statement?

6 A I don't know that I disagree with it.  
7 I -- I understand what our obligations are under  
8 the regulations.

9 Q You're aware of, since you joined  
10 McKesson, that McKesson prior to 2010 was not  
11 complying with its obligations to main- --  
12 maintain effective controls to prevent diversion  
13 of controlled substances; mainly -- namely, opioid  
14 pills into the illegal marketplace?

15 MR. SATIN: Mr. Boggs, to answer that  
16 question, you can only rely on information you  
17 learned at -- while at McKesson.

18 MR. STANNER: Object to the form.

19 THE WITNESS: Could you repeat the  
20 question?

21 BY MR. HAWAL:

22 Q Yes. Since you've joined McKesson, have  
23 you become aware that prior to 2010, McKesson was  
24 not complying with its obligations to maintain

1 effective controls to prevent the diversion of  
2 controlled substances?

3 MR. STANNER: Object to the form.

4 MR. SATIN: Same instruction.

5 THE WITNESS: It was my understanding  
6 that they were not necessarily reporting  
7 suspicious orders.

8 BY MR. HAWAL:

9 Q You're aware that in May of 2008,  
10 McKesson entered into a settlement agreement and  
11 signed a memorandum of understanding or memorandum  
12 of agreement with the U.S. Department of Justice  
13 and the DEA whereby McKesson agreed to pay a fine  
14 of \$13.25 million for failing to maintain  
15 effective controls against diversion of certain  
16 controlled substances at various of its  
17 distribution centers in the United States?

18 MR. STANNER: Object to the form.

19 THE WITNESS: I'm aware of that  
20 settlement, that that settlement agreement  
21 happened.

22 (Plaintiffs' Exhibit No. 3 was  
23 marked for identification.)

24 MR. HAWAL: Andrew.

1 MR. STANNER: I'm sorry.

2 BY MR. HAWAL:

3 Q Mr. Boggs, I handed you what's been  
4 marked as Exhibit 3. It is a document marked --  
5 Bates stamped MCKMDL00536478. It is a Settlement  
6 and Release Agreement and Administrative  
7 Memorandum of Agreement, which is dated May 2nd,  
8 2008.

9 You've seen this document previously?

10 A Not since my time at McKesson, no.

11 Q Well, did you see this document when  
12 your deposition was taken this past summer? Do  
13 you recall that?

14 A No, I don't recall.

15 Q In any event, you're aware that this  
16 agreement was executed between the Department of  
17 Justice and McKesson?

18 A I do.

19 Q And if we look at page 10 of this  
20 document, it's a document that was signed by  
21 various individuals, including John Hammergren,  
22 president of McKesson Corporation, and Donald  
23 Walker, senior vice president.

24 A I see that.

1 MR. STANNER: Sorry. The Bates number  
2 is MCKMDL00536487. The page numbers jump around.

3 BY MR. HAWAL:

4 Q Mr. Hammergren is the president of  
5 McKesson today?

6 A He is not.

7 Q When did he stop being president of  
8 McKesson?

9 A I don't know.

10 Q Well, can you give me an approximation?

11 A I can't.

12 Q Don Walker is still with McKesson?

13 A He is not.

14 Q When did he leave McKesson?

15 A Maybe a year after I was hired by  
16 McKesson, approximately.

17 Q On page 3 of this document, at the very  
18 top, "McKesson was alleged to have failed to  
19 maintain adequate controls against the diversion  
20 of controlled substances on or prior to  
21 December 31st, 2007, at all distribution  
22 facilities operated, owned or controlled by it."

23 Do you see that?

24 A I do.

1           Q     And paragraph 4, it says that "McKesson  
2     was alleged to have failed to detect and report  
3     suspicious orders of controlled substances."

4                     Is it your understanding that this was  
5     the basis for this settlement resulting in  
6     McKesson agreeing to make changes to its diversion  
7     control efforts and to pay a fine of \$13.25  
8     million?

9                     MR. STANNER:   Object to the form, vague,  
10    compound.

11                    THE WITNESS:   I believe that that's what  
12    it says in the document, yes.

13    BY MR. HAWAL:

14           Q     And if you look at the terms and  
15    conditions below that where McKesson assumed --  
16    did McKesson assume certain obligations as a  
17    result of this settlement with the Department of  
18    Justice and the DEA?

19           A     That's what it says in the document,  
20    yes.

21           Q     Well, did you know that that was in fact  
22    true as a result of your employment with McKesson?

23                    MR. STANNER:   Objection.   Form.

24                    THE WITNESS:   Only inasmuch as what's in

1 the document.

2 BY MR. HAWAL:

3 Q As a result of this settlement, McKesson  
4 agreed to maintain a compliance program designed  
5 to detect and prevent diversion of controlled  
6 substances as required under the CSA, the  
7 Controlled Substances Act, and applicable DEA  
8 regulations, and then it goes on to indicate that  
9 McKesson would establish thresholds for controlled  
10 substances.

11 Is it your understanding that that was  
12 part of the obligations assumed by McKesson as a  
13 result of the settlement?

14 A That's what it says on the document,  
15 yes.

16 Q And the document also indicates that  
17 McKesson would have its employees be trained in  
18 the detection of suspicious orders. True?

19 A That's correct.

20 Q And required McKesson to not only  
21 identify orders that are suspicious but report  
22 those suspicious orders to the DEA. True?

23 MR. STANNER: Object to the form, vague.

24 THE WITNESS: That's correct.

1 BY MR. HAWAL:

2 Q As an employee of McKesson, did you --  
3 would you expect that McKesson would take this  
4 obligation seriously?

5 MR. STANNER: Object to the form.

6 THE WITNESS: Since my time at McKesson,  
7 I've seen nothing more than them taking their  
8 regulatory obligations seriously.

9 BY MR. HAWAL:

10 Q Well, was it your -- would it be your  
11 expectation that by virtue of Mr. Walker and  
12 Mr. Hammergren signing this settlement agreement  
13 with the DEA, that it would in fact take the  
14 obligations that it is said to have assumed on  
15 page 3 as being taken seriously?

16 MR. STANNER: Object to the form,  
17 speculation.

18 THE WITNESS: I assume that to be  
19 correct.

20 BY MR. HAWAL:

21 Q At this point in time in 2008, would it  
22 be fair to say that the opioid crisis in the  
23 United States was exploding?

24 MR. STANNER: Object to the form,

1     characterization, vague, speculation.

2                   MR. SATIN:   And objection to the extent  
3     you're relying on your official work at the DEA,  
4     don't answer with respect to that work.

5                   THE WITNESS:   I don't know that I can  
6     answer that question.

7     BY MR. HAWAL:

8                   Q     Well, sir, I mean, were you -- you  
9     weren't living in a DEA bubble in 2008, were you?  
10    Were you paying attention to what was in the news  
11    media and in various forms, whether it be print  
12    or -- or television?

13                  A     I was paying attention to my duties and  
14    responsibilities at the Drug Enforcement  
15    Administration.

16                  Q     Were you also aware that in the public  
17    domain, by virtue of media reports, that it was  
18    prominently identified in this time period that  
19    the opioid epidemic was exploding in the United  
20    States?

21                  MR. STANNER:   Object to the form.

22                  THE WITNESS:   I know that there were  
23    media articles about the opioid epidemic during  
24    that time frame.

1 (Plaintiffs' Exhibit No. 4 was  
2 marked for identification.)

3 MR. HAWAL: Andrew.

4 I'm going to use the ELMO.

5 BY MR. HAWAL:

6 Q Mr. Boggs, I'm handing you what has been  
7 marked as Plaintiffs' Exhibit 4. It's a 2000 --  
8 May of 2002 report of the United States General  
9 Accounting Office, entitled "Prescription drugs:  
10 State monitoring programs provide useful tools to  
11 reduce diversion."

12 Have you seen this document?

13 MR. STANNER: So let me just clarify,  
14 Mr. Hawal. What this appears to be is the cover  
15 page --

16 MR. HAWAL: Yeah.

17 MR. STANNER: -- and an excerpt. This  
18 is not the entire document. Is that accurate?

19 MR. HAWAL: It's not the entire  
20 document.

21 MR. STANNER: I just want to clarify.

22 MR. HAWAL: I'm just going to ask him  
23 about one paragraph on page 2. Well, actually,  
24 it's on page 4.

1 BY MR. HAWAL:

2 Q On the back of page 4, on the back of  
3 the exhibit that you have in front of you, it  
4 states: "The diversion and abuse of prescription  
5 drugs are associated with incalculable costs to  
6 society in terms of addiction, overdose, death and  
7 related criminal activities. DEA has stated that  
8 the diversion and abuse of legitimately produced  
9 controlled pharmaceuticals constitute a  
10 multibillion dollar illicit market nationwide."

11 Based upon your experience, sir, is that  
12 a true statement?

13 MR. STANNER: Object to the form.

14 MR. SATIN: And object to the extent  
15 it's calling for you to rely on your time at the  
16 DEA. You can't rely on that information or  
17 disclose information about your work at the DEA in  
18 answering that question.

19 THE WITNESS: I think that the abuse of  
20 prescription drugs can cause societal issues and  
21 costs associated with societal issues.

22 BY MR. HAWAL:

23 Q So you do agree with that statement?

24 MR. STANNER: Same objection.

1                   THE WITNESS:   Without some of -- seeing  
2   some of the specific facts in terms of the  
3   adjectives used in there, I don't know whether I  
4   can necessarily agree.   I mean, it is a horrific  
5   problem in this country.

6                   (Counsel conferring.)

7                   (Plaintiffs' Exhibit No. 5 was  
8                   marked for identification.)

9   BY MR. HAWAL:

10               Q     Mr. Boggs, I have handed you a  
11   PowerPoint presentation marked as Exhibit 5.   Have  
12   you -- have you seen this document before?

13               MR. SATIN:   We have a document that's  
14   got writing in the middle.   I don't know if that's  
15   a mistake.

16               MR. HAWAL:   No, it's -- it's the way it  
17   was produced to me.   I don't know whose writing it  
18   is, but...

19               MR. STANNER:   Do you -- I see there's no  
20   Bates number on it.   Are you aware of where it was  
21   produced from?

22               MR. HAWAL:   I -- I am not.   And I don't  
23   have one with the Bates number on it.

24   BY MR. HAWAL:

1 Q In any event, this is a document that  
2 was apparently created by someone at the DEA.

3 Would that be a fair statement, Mr. Boggs?

4 A I don't recall --

5 MR. STANNER: Object. Form and  
6 foundation.

7 THE WITNESS: I don't recall ever seeing  
8 this document before.

9 BY MR. HAWAL:

10 Q Well, are you familiar with the logos on  
11 the front page of the document as being logos  
12 associated with the Department of Justice and the  
13 DEA, Office of Diversion Control?

14 A They certainly appear to be, yes.

15 Q Are you aware that such a meeting or  
16 that such meetings occurred in approximately 2009,  
17 2008, and the late 2000s?

18 MR. SATIN: Objection.

19 MR. STANNER: Vague. Object to the form  
20 of the question.

21 MR. SATIN: And objection pursuant to  
22 Touhy. Do not answer that.

23 BY MR. HAWAL:

24 Q Let's go to slide number 3 under "Closed

1 System."

2 MR. HAWAL: Do you have it?

3 (Counsel conferring.)

4 BY MR. HAWAL:

5 Q Slide number 3. Do you see that the --  
6 where it identifies "Closed System," it's reported  
7 that: "When a registrant fails to adhere to their  
8 responsibilities, those violations represent a  
9 danger to the public and jeopardize the closed  
10 system of distribution."

11 Is it your understanding that as a  
12 result of your work at McKesson that that is in  
13 fact an accurate and true statement?

14 MR. STANNER: Object to the form.

15 THE WITNESS: I would agree that if --  
16 potential failure to adhere to a responsibility  
17 could have some consequences to that.

18 BY MR. HAWAL:

19 Q And on slide number 15, this slide  
20 reiterates what the obligations of a wholesaler,  
21 including McKesson, is and has been since 1970 as  
22 it relates to suspicious orders. True?

23 MR. STANNER: Object to the form of the  
24 question and foundation.

1 THE WITNESS: It appears to reiterate  
2 the regulation, yes.

3 BY MR. HAWAL:

4 Q And on the next page, slide 16, is it  
5 your understanding that the reporting of a  
6 suspicious order does not relieve a distributor,  
7 including McKesson, of the responsibility to  
8 maintain effective controls against diversion?

9 MR. STANNER: Object to the form.

10 THE WITNESS: It's my understanding that  
11 the distributors, you know, have an obligation to  
12 identify and report suspicious orders, and they  
13 have an obligation to maintain effective controls  
14 against diversion.

15 BY MR. HAWAL:

16 Q Well, other than just reporting  
17 suspicious orders, what other obligations does a  
18 distributor have such as McKesson?

19 A I --

20 MR. STANNER: Objection. Calls for a  
21 narrative.

22 THE WITNESS: A distributor has a  
23 responsibility to maintain security over those  
24 controlled substances that are maintained in our

1     warehouses, and we do that through cages and  
2     vaults and security cameras, and all of those  
3     kinds of things, while those things are in our  
4     possession.

5     BY MR. HAWAL:

6             Q     Well, we're talking about reporting  
7     suspicious orders.

8                     What other -- in the context of this  
9     statement, what other responsibilities does a  
10    distributor have which is not relieved simply by  
11    reporting suspicious orders?

12                    MR. STANNER:  Objection to the form of  
13    the question.

14                    THE WITNESS:  Well, what the -- what  
15    you're asking me about is the -- maintaining  
16    effective controls against diversion, and part of  
17    that is the security while they're in our  
18    possession.

19    BY MR. HAWAL:

20             Q     Well --

21             A     That's maintaining effective controls  
22    against diversion.

23             Q     Well, let's -- let's just focus for a  
24    moment on suspicious orders as this slide is

1 focused on.

2 What other responsibilities does a  
3 distributor like McKesson have beyond simply  
4 reporting a suspicious order as it relates to  
5 suspicious orders?

6 MR. STANNER: Object to the form of the  
7 question.

8 THE WITNESS: Well, there's two  
9 different obligations that we have. Under the --  
10 as you're asking me about suspicious orders, our  
11 obligation under the regulation is to design and  
12 operate a system to identify suspicious orders,  
13 and then report those to the DEA. That's the  
14 regulation for suspicious orders.

15 BY MR. HAWAL:

16 Q Well, does that obligation also require  
17 McKesson to not ship a suspicious order unless  
18 it's determined through due diligence that it is  
19 unlikely to be diverted into illicit channels?

20 MR. STANNER: Objection to the form.

21 THE WITNESS: I'm not -- I'm not aware  
22 anywhere in the regulation it says not to ship.  
23 It says to identify and report suspicious orders.

24 BY MR. HAWAL:

1           Q     Do you ship suspicious orders without  
2     determining that they're going to be diverted?

3           A     Under our system today, we have a system  
4     that identifies suspicious orders, we block those  
5     orders, and we don't ship those orders.

6           Q     How long has that been the case at  
7     McKesson that suspicious orders were blocked and  
8     not shipped?

9                     MR. STANNER: Object to form.

10                    THE WITNESS: McKesson has been blocking  
11     orders probably 2007, 2008.

12     BY MR. HAWAL:

13           Q     Or at least should have been, true?

14                    MR. STANNER: Object to the form of the  
15     question.

16                    THE WITNESS: The regulation does not  
17     say that we -- to block. It says to identify and  
18     report suspicious orders.

19     BY MR. HAWAL:

20           Q     Since you have joined McKesson, have you  
21     gone back to determine what McKesson was doing  
22     with suspicious orders in 2007 and 2008?

23           A     I have reviewed some materials of the  
24     type of programs that they had back in -- around

1 2007, 2008.

2 Q And was -- is it your understanding that  
3 McKesson undertook a responsibility to block and  
4 not ship suspicious orders?

5 MR. STANNER: Object to the form to the  
6 extent it's asking for speculation.

7 THE WITNESS: I understand that part of  
8 the program was to block an order and not ship it.  
9 Yes.

10 BY MR. HAWAL:

11 Q Is it your understanding that that was  
12 one of the responsibilities that McKesson assumed  
13 and undertook as part of its settlement with the  
14 Department of Justice and DEA in 2008?

15 MR. STANNER: Objection. Speculation.

16 THE WITNESS: I think it was part of the  
17 program that they created in response to the  
18 settlement agreement.

19 BY MR. HAWAL:

20 Q In other words, McKesson made an  
21 obligation or set forth an obligation and  
22 undertook an obligation, according to that  
23 settlement agreement, that it would not only  
24 report suspicious orders to the DEA but it would

1 block and not ship suspicious orders. True?

2 MR. STANNER: Objection to the form,  
3 speculation.

4 THE WITNESS: I believe as part of the  
5 settlement agreement that they were required or  
6 agreed to design and operate a system to identify  
7 suspicious orders and that they would block those  
8 orders.

9 BY MR. HAWAL:

10 Q And if we look at slide number 17, the  
11 DEA, according to this PowerPoint presentation,  
12 indicated that it cannot advise a distributor of  
13 an order if an order is legitimate or not.

14 Do you see that?

15 A I see that, yes.

16 Q Has the DEA ever -- since you've been at  
17 McKesson, has the DEA ever advised you or anyone  
18 at McKesson otherwise than what is stated here?

19 MR. STANNER: Object to the form to the  
20 extent he knows about anyone at McKesson.

21 THE WITNESS: I don't recall having any  
22 discussions with anyone from DEA regarding that  
23 specific area.

24 BY MR. HAWAL:

1           Q     Well, has DEA ever, to your knowledge,  
2     informed McKesson that -- anything contrary to  
3     what is stated here, that the DEA cannot advise a  
4     distributor if an order is legitimate or not?

5           MR. SATIN:   And objection to the extent  
6     it's asking you for your knowledge while at the  
7     DEA, don't answer that.

8           THE WITNESS:   Since I've been at  
9     McKesson, I have not seen anything from DEA that  
10    even -- that discusses this topic.

11   BY MR. HAWAL:

12           Q     Is it your understanding as an employee  
13    of McKesson that it is McKesson's obligation, and  
14    not the DEA's, to determine whether an order is  
15    suspicious or legitimate?

16           MR. STANNER:   Object to the form.

17           THE WITNESS:   I understand the  
18    regulation requires businesses such as McKesson to  
19    design and operate a system that discloses to  
20    McKesson or other distributors suspicious orders  
21    as defined in the regulation.

22   BY MR. HAWAL:

23           Q     Is it your understanding as an employee  
24    of McKesson that it would not be appropriate

1 simply to accumulate suspicious order reports and  
2 provide them in bulk to the DEA at the end of the  
3 month, but, rather, the obligation is to report to  
4 the DEA suspicious orders when they are  
5 discovered?

6 MR. STANNER: Object to the form of the  
7 question.

8 THE WITNESS: I'm not sure if there are  
9 certain parts of agreements that McKesson may have  
10 entered into with the DEA to report things in a  
11 different manner other than what the regulation  
12 requires. It's my understanding a regulation  
13 requires us to report them when discovered.  
14 However, I know that there are certain terms of  
15 the settlement agreements that somewhat deviate a  
16 little bit from the way the regulation is actually  
17 written.

18 BY MR. HAWAL:

19 Q Well, are you aware of any document  
20 which sets forth an agreement between the DEA and  
21 McKesson whereby it would be appropriate for  
22 McKesson to accumulate suspicious order reports  
23 and send them in bulk at the end of a month as  
24 opposed to sending them when they are discovered?

1 MR. STANNER: Object to the form.

2 THE WITNESS: I don't know if there's  
3 any agreements between McKesson and the DEA prior  
4 to my employment that would have deviated from the  
5 regulatory requirements.

6 BY MR. HAWAL:

7 Q As a result of your work with McKesson,  
8 are you aware of any published calculations or  
9 algorithms from the DEA which informed McKesson or  
10 other distributors as to what orders should or  
11 should not be reported to the DEA as suspicious?

12 A Not that I'm aware of.

13 Q According to slide number 17, the DEA is  
14 identifying to distributors that it is their  
15 responsibility to determine which orders are  
16 suspicious and make their own decisions as to  
17 whether or not those orders should be shipped or  
18 not. True?

19 MR. STANNER: Objection. Vague, "true."

20 THE WITNESS: I understand under the  
21 regulations that the distributor has an obligation  
22 to design and operate a system that discloses to  
23 the distributor those suspicious orders.

24 BY MR. HAWAL:

1           Q     Since you've been with McKesson, have  
2     you ever seen or are you aware of the DEA ever  
3     endorsing any calculations that were proposed by  
4     any distributor, including McKesson, that would be  
5     used to identify suspicious orders?

6           A     Are you asking strictly for calculations  
7     or --

8           Q     Yes, sir. For -- for calculations that  
9     were created or proposed by DEA on how a  
10    distributor like McKesson should be used to  
11    identify suspicious orders.

12                   MR. STANNER: Object to the form.

13                   THE WITNESS: Not calculations  
14    specifically. There's been other guidance, but  
15    not calculations.

16    BY MR. HAWAL:

17           Q     As to your knowledge, as a result of  
18    your work at McKesson, has the DEA ever published  
19    or provided any kind of advisory opinion to  
20    McKesson or any other distributor regarding the  
21    identify -- identification of an order as  
22    suspicious?

23           A     I believe that --

24                   MR. STANNER: Object -- I'm going to

1 object that it's vague. Sorry.

2 THE WITNESS: I believe if you read the  
3 September 27th, 2006 letter from Joe Rannazzisi  
4 that you have submitted as an exhibit to me today,  
5 it puts forth some red flags that might be used in  
6 understanding of -- identification of certain  
7 suspicious orders.

8 BY MR. HAWAL:

9 Q All right. So you're referring to  
10 Exhibit 1, the third page of Mr. Rannazzisi's  
11 letter of September 27th, 2006?

12 A That's correct.

13 Q And in that letter, Mr. Rannazzisi is  
14 identifying examples of circumstances that might  
15 be indicative of diversion of controlled  
16 substances?

17 A I am.

18 Q And in paragraph 1, it says: "Ordering  
19 excessive quantities of a limited variety of  
20 controlled substances while ordering few, if any,  
21 other drugs might be an indication that diversion  
22 is occurring."

23 A That's correct.

24 Q And the same would be true with bullet

1 point number 2: "Ordering a limited variety of  
2 controlled substances in quantities that are  
3 disproportionate to non-controlled medications  
4 that are ordered"?

5 A That's correct.

6 MR. STANNER: Object -- I'm going to  
7 object to the form of that question. It's unclear  
8 if you're asking if that's true or if that's what  
9 it says.

10 MR. HAWAL: I'm asking whether or not --  
11 well, let me clarify. Obviously it's what he  
12 said.

13 BY MR. HAWAL:

14 Q But do you agree that that's an accurate  
15 statement?

16 A I believe that it -- it is a red flag or  
17 could be indicative of diversion, depending on the  
18 facts and circumstances.

19 Q And number 3: "Ordering excessive  
20 quantities of a limited variety of controlled  
21 substances in combination with excessive  
22 quantities of lifestyle drugs." Is that an  
23 accurate statement?

24 A That's what it says, yes.

1 Q And what are lifestyle drugs? Opioids?

2 A No, I believe in the context of this,  
3 lifestyle drugs may be things like testosterone  
4 or -- you know, steroids or Viagra, or other  
5 things like that, hair growth drugs. People have  
6 different definitions of "lifestyle drugs."

7 Q And number 4: "Ordering the same  
8 controlled substances from multiple distributors"  
9 could be another red flag?

10 A That's what --

11 MR. STANNER: Object to the form of the  
12 question.

13 BY MR. HAWAL:

14 Q So Mr. -- and then -- and then  
15 Mr. Rannazzisi has ten additional bullet points.  
16 I will not read them all. But he is attempting to  
17 provide distributors with examples of what they  
18 should be looking for as part of their due  
19 diligence with regard to their responsibility to  
20 identify suspicious orders and not ship them.

21 MR. SATIN: Object --

22 BY MR. HAWAL:

23 Q True?

24 MR. SATIN: Objection. Do not answer

1 that question as it calls for the witness to  
2 testify about what Mr. Rannazzisi's intentions  
3 were back then.

4 BY MR. HAWAL:

5 Q Well, would it be a fair interpretation  
6 of these various bullet points that Mr. Rannazzisi  
7 set forth on this page as setting forth examples  
8 of what distributors should look for in  
9 determining whether an order is suspicious and  
10 shouldn't be shipped? Would that be fair -- as  
11 you sit here, a fair understanding of what this  
12 document is intended to express?

13 MR. STANNER: Objection to the form of  
14 the question.

15 MR. SATIN: Objection as well. Do not  
16 answer that.

17 BY MR. HAWAL:

18 Q Are these things that you at McKesson  
19 look for now as factors in determining whether an  
20 order may be suspicious or not?

21 A There may be some on here that we would  
22 look at. Most of these are focused predominantly  
23 on -- on what would be a rogue internet pharmacy,  
24 which in today's environment is almost

1 nonexistent. So we don't necessarily look at  
2 these in the same context today as we might have  
3 before.

4 Q But in any event, you at McKesson would  
5 not use this as an algorithm to report or to  
6 identify suspicious orders. True?

7 MR. STANNER: Object to the form of the  
8 question, "use this as an algorithm."

9 THE WITNESS: I'm not sure I understand  
10 your question. I mean, McKesson uses today very  
11 sophisticated algorithms to identify suspicious  
12 orders.

13 BY MR. HAWAL:

14 Q Well, I understand that, and the  
15 algorithm is created on the basis of McKesson's  
16 own input of information as to how a suspicious  
17 order should be identified. True?

18 It independently makes that  
19 determination on its own?

20 A Yes, it does.

21 MR. STANNER: Object to the form of the  
22 question.

23 BY MR. HAWAL:

24 Q Have you -- did you see these letters

1 before they went out, these Rannazzisi letters,  
2 both Exhibit 1 and Exhibit 2?

3 MR. STANNER: Object to the form of the  
4 question.

5 You're referring to 2006?

6 MR. HAWAL: Yes, and 2007.

7 MR. SATIN: Objection. Don't answer  
8 that question.

9 BY MR. HAWAL:

10 Q Did you have any role in drafting these  
11 letters?

12 MR. SATIN: Objection. Don't answer  
13 that question.

14 BY MR. HAWAL:

15 Q Based upon your work at McKesson, are  
16 monthly limit reports or excessive purchase  
17 reports sent to the DEA as a part of its  
18 suspicious order monitoring and reporting  
19 requirements?

20 MR. STANNER: Object to the form.  
21 Vague.

22 THE WITNESS: Since I've been at  
23 McKesson, we have engaged with an independent  
24 third-party expert in the area to develop very

1 sophisticated and dynamic thresholds that we have  
2 employed as part of our due diligence program or  
3 our controlled substance monitoring and suspicious  
4 order reporting requirements.

5 BY MR. HAWAL:

6 Q Does that result in McKesson sending to  
7 the DEA monthly ingredient limit reports or  
8 excessive purchase reports as part of its efforts  
9 to identify suspicious orders? Is that -- do you  
10 do that?

11 MR. STANNER: Object to the form of the  
12 question.

13 THE WITNESS: We report suspicious  
14 orders to the DEA daily. Some of those suspicious  
15 orders may be orders that are excessive purchases  
16 or orders that are unusual size.

17 BY MR. HAWAL:

18 Q But that is based upon a due diligence  
19 investigation, correct?

20 MR. STANNER: Objection. Vague.

21 THE WITNESS: No, it's not.

22 BY MR. HAWAL:

23 Q What is it based on?

24 A It's based on the algorithm.

1           Q     And who created -- who creates the  
2     algorithm?

3           A     We hired an independent consultant that  
4     has expertise in mathematics and economics.

5           Q     And who -- and who -- what company is  
6     that?

7           A     The Analysis Group.

8           Q     Do you know whether the Analysis Group,  
9     other than sending reports to the DEA, has been in  
10    contact with the DEA as to how to create its  
11    algorithms?

12                   MR. STANNER:  Objection.  Speculation.

13                   THE WITNESS:  Only inasmuch as there --  
14    I attended some meetings that AGI was in where  
15    they presented their calculation methodology to  
16    the DEA, yes.

17    BY MR. HAWAL:

18           Q     But did the DEA ever provide its input  
19    on how that methodology should be created, or did  
20    it rely upon the Analysis Group to create its own  
21    algorithm?

22                   MR. STANNER:  Objection to the extent it  
23    calls for speculation.

24                   THE WITNESS:  I don't believe the DEA

1 provided any input when -- when I was present.

2 BY MR. HAWAL:

3 Q Was it ever contemplated -- well, strike  
4 that.

5 Since you've come to McKesson, did you  
6 ever learn from the DEA that McKesson could  
7 delegate to its customers the legal obligations to  
8 prevent diversion of controlled substances?

9 MR. STANNER: Objection to the form.

10 THE WITNESS: I'm not sure I understand  
11 your question.

12 BY MR. HAWAL:

13 Q Well, we've talked about all the legal  
14 obligations that a company like McKesson has as a  
15 distributor to put in place a system to prevent  
16 the diversion of controlled substances, right?

17 A That's correct.

18 Q Have you ever been told by the DEA that  
19 McKesson could delegate that legal obligation to  
20 its pharmacy customers?

21 A It -- the pharmacy customers have their  
22 own regulatory obligations to maintain effective  
23 controls against diversion.

24 Q So does -- does McKesson delegate its

1 obligations under the Controlled Substances Act to  
2 customers?

3 A Not to my knowledge.

4 Q I mean, it's McKesson's obligation, and  
5 it's a non-delegable obligation, true?

6 A Well, all registrants have various  
7 obligations. So, you know, it's not just  
8 McKesson's obligation and nobody else's.

9 Q I under- --

10 A Other registrants have obligations as  
11 well.

12 Q I understand. But my question relates  
13 to the obligations of a distributor like McKesson.  
14 It has certain legal obligations, correct?

15 A That's correct.

16 Q You agree with me that McKesson cannot  
17 delegate its obligations to a customer?

18 A I agree.

19 Q Would you agree that one of the key  
20 provisions of the new Controlled Substance  
21 Monitoring Program, or CSMP, that was established  
22 in 2008 as a result of the settlement with the  
23 Department of Justice and the DEA, was the  
24 creation of thresholds?

1 MR. STANNER: Object to the form.

2 THE WITNESS: I believe that that's  
3 correct, yes.

4 BY MR. HAWAL:

5 Q Is the creation of thresholds considered  
6 one of the important cornerstones of McKesson's  
7 diversion prevention efforts?

8 MR. STANNER: Object to the form, calls  
9 for speculation, vague.

10 THE WITNESS: It is one -- one piece of  
11 that program.

12 BY MR. HAWAL:

13 Q Is it an important piece?

14 A It's an important piece in terms of  
15 fulfilling our obligations to report -- identify  
16 and report suspicious orders. We -- we have  
17 several other parts of our program that are  
18 probably much more important to our program.

19 BY MR. HAWAL:

20 Q And if a customer wanted to exceed its  
21 monthly limit or threshold for any opioid product,  
22 the protocol since 2008 would require the customer  
23 to provide McKesson with a legitimate business  
24 reason for doing so. True?

1 MR. STANNER: Objection. Calls for  
2 speculation.

3 THE WITNESS: From my review of the  
4 previous program in its form, that was part of  
5 that program.

6 BY MR. HAWAL:

7 Q And the obligation for a customer to  
8 provide a legitimate business reason for exceeding  
9 its limit or threshold, that would be necessary  
10 before the threshold would be increased by  
11 McKesson. True?

12 MR. STANNER: Same objection.

13 THE WITNESS: There may be other reasons  
14 to increase or decrease a threshold, but that's  
15 one way that an increase would occur.

16 BY MR. HAWAL:

17 Q Well, does McKesson still require a  
18 customer to provide a legitimate business reason  
19 in order to increase its limit or threshold for a  
20 given opioid product?

21 A There's different --

22 MR. STANNER: Object -- I'm sorry.  
23 Object to the form. Just the use of the word  
24 "still," assumes facts.

1                   THE WITNESS: There's different reasons  
2   that a customer's threshold might be adjusted,  
3   whether it be upward or downward, and so there's  
4   different reasons when those thresholds are  
5   changed.

6   BY MR. HAWAL:

7               Q     Well, what are some of the reasons that  
8   you're aware of that would justify increasing a  
9   customer's threshold other than a legitimate  
10  business reason?

11            A     We could have a glitch in our computer  
12  system that didn't calculate things correctly, and  
13  we would have to modify that to -- to make -- you  
14  know, if you will, make the customer whole in  
15  terms of their thresholds.

16                   There may be other reasons outside of a  
17  business reason for a customer -- for a threshold  
18  to be increased.

19            Q     Give me an example of something that  
20  would be outside of a legitimate business reason  
21  that would justify increasing a customer's  
22  threshold for an opioid pharmaceutical.

23            A     The customer may have been subject to a  
24  burglary or robbery that wiped out their entire

1 inventory and needed to be replenished after that.

2 Q Well, wouldn't that fall within a  
3 legitimate business reason for an increase?

4 A I certainly wouldn't consider a  
5 burglary --

6 Q Well --

7 A -- a business reason.

8 Q Well, it -- well, it's -- it would be a  
9 business reason for -- from the perspective of the  
10 customer, not from the perspective of the burglar,  
11 true?

12 A That's correct.

13 Q If a customer wanted a threshold  
14 increase without a legitimate business reason,  
15 would that threshold increase -- or should that  
16 threshold increase be considered a suspicious  
17 order?

18 Do you understand -- let me rephrase --  
19 let me rephrase the question.

20 Assuming -- let's assume a customer  
21 contacts McKesson and says, Look, I need to  
22 increase my threshold, and it provides no  
23 legitimate business reason. Would that be  
24 considered a suspicious order?

1           A     No.

2           Q     What if it was shipped without a  
3     legitimate business reason, should it be  
4     considered a suspicious order?

5                     MR. STANNER: Object to the form of the  
6     question.

7                     THE WITNESS: If they were requesting an  
8     increase?

9     BY MR. HAWAL:

10          Q     Yeah, if a customer requested an  
11     increase, did not provide a legitimate business  
12     reason, and McKesson shipped it, should that be  
13     considered a suspicious order?

14                     MR. STANNER: Object to the  
15     hypothetical. Form of the question.

16                     THE WITNESS: I think you're assuming  
17     that we granted the increase.

18     BY MR. HAWAL:

19          Q     Yeah, hypothetically, I'm asking you to  
20     assume --

21          A     Well, I didn't think that was part of  
22     the question. I thought you just asked if they  
23     had requested an increase.

24          Q     A customer requests an increase, no

1 legitimate business reason is provided, and  
2 McKesson ships -- provides the increase and ships  
3 the additional product, the opioid, would that be  
4 considered or should it be considered a suspicious  
5 order?

6 MR. STANNER: Object to the form of the  
7 question, assumes facts, foundation.

8 THE WITNESS: Based on your  
9 hypothetical, that increase would probably not  
10 have been granted in the first place.

11 BY MR. HAWAL:

12 Q It shouldn't be granted, right?

13 A My -- unless there was additional  
14 follow-up or whatever to get some additional  
15 information, that -- that increase might not have  
16 been granted.

17 Q And do you agree that the law requires  
18 that suspicious orders that are blocked should not  
19 be shipped to the customer?

20 MR. STANNER: Sorry. Object to the form  
21 of the question. "Orders that are blocked" --

22 MR. HAWAL: Yes, sir.

23 MR. STANNER: -- "should not be  
24 shipped."

1                   THE WITNESS: I don't know that there's  
2   anything in the law that there's a requirement to  
3   not ship that -- that. It says to identify and  
4   report suspicious orders.

5   BY MR. HAWAL:

6                   Q     So is it your position that a suspicious  
7   order that is identified and reported can be  
8   shipped or should be shipped?

9                   MR. STANNER: Object to the form of the  
10   question, calls for a legal conclusion.

11                  THE WITNESS: Under our program, we  
12   block the order and don't ship it.

13   BY MR. HAWAL:

14                  Q     All right. And why do you do that?

15                  A     Because we have -- we -- that is the way  
16   we have structured our program. There have been  
17   recent court rulings that if you operate a  
18   different type of a program to involve  
19   decision-making to ship that, it requires some  
20   additional due diligence before you can ship that.  
21   We choose a more conservative approach in the way  
22   we operate our program.

23   BY MR. HAWAL:

24                  Q     You -- you do that in order to

1 effectively exercise your responsibility to avoid  
2 diversion, true?

3 MR. STANNER: Object to the form.

4 THE WITNESS: Well, I think, first of  
5 all, you have to understand that a suspicious  
6 order does not equal a suspicious customer. It's  
7 important to understand that -- that orders that  
8 are simply of unusual size or deviate  
9 substantially from a normal pattern or -- or  
10 frequency are simply that. Without further  
11 knowing more about the customer, you don't know  
12 whether or not that suspicious order is destined  
13 for diversion or not. And we know from our  
14 experience, more likely than not that that's not  
15 the case.

16 So to focus on a suspicious order is  
17 actually misplaced. If you really want to know  
18 whether or not diversion may or may not occur, you  
19 need to know the customer. And so part of our  
20 program is extensive due diligence so that we know  
21 our customer.

22 BY MR. HAWAL:

23 Q Well, the first -- the first reason to  
24 be looking at your customer would be the

1 identification of suspicious orders, which could  
2 in fact lead you to identify a suspicious  
3 customer, true?

4 MR. STANNER: Object to the form of the  
5 question.

6 THE WITNESS: Well, you could have a  
7 customer that places an order for a 100-count  
8 bottle of pills or one bottle of 500 pills, and  
9 that would never be identified as a suspicious  
10 order, and when it's shipped to the customer, the  
11 customer diverts it, and it would never be  
12 identified as a suspicious order.

13 BY MR. HAWAL:

14 Q I understand that there are all sorts of  
15 possibilities, but the fact of the matter is that  
16 suspicious orders can lead you to a suspicious  
17 customer, true?

18 MR. STANNER: Object to the form of the  
19 question.

20 THE WITNESS: Without knowing more about  
21 the customer, no.

22 BY MR. HAWAL:

23 Q Well --

24 A There is an assumption that a suspicious

1 order equals a suspicious customer, and that's  
2 very misplaced from my experience.

3 Q Well, sir, are you talking about --  
4 what -- what experience are you talking about?

5 A My experience at McKesson.

6 Q Well, the -- the terms and conditions of  
7 the 2008 settlement agreement called for the  
8 identification and detection of suspicious orders.  
9 True?

10 A That's correct.

11 Q Do you see one word in this entire  
12 agreement that talks about suspicious customers?

13 MR. STANNER: I'm sorry, which exhibit  
14 are you referring to?

15 MR. HAWAL: I don't remember the -- the  
16 number, but it's the settlement release and  
17 agreement.

18 MS. MONAGHAN: This is 3.

19 MR. STANNER: Obviously we don't want  
20 him to read the entire thing here.

21 MR. HAWAL: Yeah, I don't.

22 BY MR. HAWAL:

23 Q Did you ever see anything in this  
24 obligation that McKesson undertook in 2008 that

1     talks about anything other than suspicious orders  
2     and the need to identify them and report them?

3                   MR. STANNER:   Object to the form of the  
4     question, assumes facts.

5                   THE WITNESS:   It talks about maintaining  
6     effective controls against diversion.

7     BY MR. HAWAL:

8           Q     Mm-hmm.   And I think we went through --

9           A     Sure.

10          Q     -- a number of times that  
11     paragraph 1(a) identifies suspicious orders.   And  
12     by my count, it's three in that paragraph.   And if  
13     you go to paragraph (c), it again talks about  
14     suspicious orders.

15                  But nowhere do I see anything about  
16     suspicious customers.   Am I incorrect?

17          A     I don't -- without reading the entire  
18     document, I don't know that it speaks to it or  
19     not.   I'm not sure what your question is.

20          Q     Well, if you would like to at -- you  
21     know, during the course of the break to -- to read  
22     the entire document and tell me where you find  
23     suspicious customers, I'll be happy to allow you  
24     to come back and correct -- correct me.   Okay?

1 MR. SATIN: Counsel, I don't think he  
2 can do that. If you want him to read this now and  
3 give you an answer, he can do it. But he can't --  
4 you can't ask him to do work outside of the  
5 hearing. If you want an answer --

6 MR. HAWAL: Well, I can -- I can ask him  
7 anything I'd like. I mean, we are going to be  
8 taking breaks during -- and including a lunch  
9 break, and if -- if you or McKesson's counsel  
10 wants to assist the witness to identify suspicious  
11 customers in this document, I would be happy to do  
12 that as well.

13 BY MR. HAWAL:

14 Q As part of this settlement agreement,  
15 did it -- does it appear to you that the DEA and  
16 the Department of Justice expected McKesson to  
17 provide its employees, including sales  
18 representatives, with adequate training and  
19 guidance on how to implement and obey this new  
20 Controlled Substance Monitoring Program?

21 MR. STANNER: Object --

22 MR. SATIN: Objection -- sorry.  
23 Objection. Do not answer that as it's asking for  
24 what the DEA was intending.

1 BY MR. HAWAL:

2 Q You've read this -- you've read this  
3 document previously, correct?

4 A I only -- I have not read it cover to  
5 cover, no.

6 Q Well, is it your expectation as a  
7 McKesson employee that McKesson's sales  
8 representatives and Regulatory Affairs  
9 representatives should have adequate training on  
10 how to implement and effectively follow the  
11 Controlled Substance Monitoring Program that  
12 McKesson has created?

13 MR. STANNER: Object to the form.

14 THE WITNESS: I believe that that was  
15 part of the settlement agreement for the -- for  
16 the terms of the -- during the terms of the  
17 settlement agreement.

18 BY MR. HAWAL:

19 Q And do you believe as a McKesson  
20 employee that that should be an obligation that  
21 McKesson should have followed and adhere to?

22 MR. STANNER: Object to the form.

23 THE WITNESS: I believe that it was part  
24 of the agreement during the terms of the life of

1 this agreement and what they were responsible for.

2 BY MR. HAWAL:

3 Q Before creating the CSMP as a result of  
4 this settlement agreement, did McKesson have what  
5 is referred to as a Lifestyle Drug Monitoring  
6 Program?

7 A That's my understanding, yes.

8 Q And in that context, lifestyle drugs  
9 referred to what?

10 MR. STANNER: Objection. Calls for  
11 speculation.

12 THE WITNESS: From -- from reading the  
13 documents, it referred to drugs that they had  
14 discussed with the DEA regarding drugs that were  
15 used pursuant to a rogue internet pharmacy.

16 BY MR. HAWAL:

17 Q Drugs that were prone to diversion?

18 MR. STANNER: Same objection.

19 THE WITNESS: All drugs are prone to  
20 diversion that are controlled.

21 BY MR. HAWAL:

22 Q Well, we're talking about controlled  
23 substances, right?

24 A That's what I said, all controlled

1 substances are prone to diversion.

2 Q Well, lifestyle drugs under that program  
3 referred to controlled substances such as opioids?

4 MR. STANNER: Same objection.

5 THE WITNESS: I believe that that was  
6 part of that program, yes.

7 BY MR. HAWAL:

8 Q And under that program, did McKesson  
9 also have a threshold for retail pharmacies?

10 MR. STANNER: Same -- same objection.

11 THE WITNESS: That was my understanding,  
12 yes.

13 BY MR. HAWAL:

14 Q And was the across-the-board threshold  
15 set at 8,000 for a controlled substance,  
16 individual controlled substances?

17 MR. STANNER: Same objection.

18 THE WITNESS: It was my understanding  
19 that those were a base threshold for a -- for a  
20 narrow set of controlled substances, yes.

21 BY MR. HAWAL:

22 Q And which controlled substances did you  
23 understand had an 8,000 threshold under the  
24 lifestyle monitoring program?

1 MR. STANNER: Same objection.

2 THE WITNESS: I'd have to go back and  
3 refer to the documents. I haven't -- I don't  
4 recall specifically which ones.

5 BY MR. HAWAL:

6 Q Well, would it -- would it include  
7 oxycodone, for example?

8 A I believe it did.

9 MR. STANNER: Same objection.

10 BY MR. HAWAL:

11 Q Hydrocodone --

12 MR. STANNER: Same objection.

13 BY MR. HAWAL:

14 Q -- as well?

15 A I believe it did, yes.

16 Q And under that program, was McKesson  
17 supposed to generate reports if a customer  
18 exceeded a monthly purchase of 8,000 oxycodone or  
19 hydrocodone pills?

20 MR. STANNER: Same objection.

21 THE REPORTER: Excuse me, did you have  
22 an answer?

23 MR. STANNER: I thought he did.

24 I thought you answered.

1 THE WITNESS: It was my understanding  
2 that they generated reports, yes.

3 BY MR. HAWAL:

4 Q Okay. And if a customer -- under that  
5 program, if a customer exceeded that threshold,  
6 McKesson was obligated to conduct a Level I,  
7 Level II or Level III investigation of that  
8 customer?

9 MR. STANNER: So let me just make a  
10 standing objection here.

11 To the extent the questions are asking  
12 him to reiterate what's in the program, it calls  
13 for speculation. It's based on hearsay.  
14 Otherwise, the objection stands.

15 BY MR. HAWAL:

16 Q Go ahead, sir.

17 A That was my understanding, yes.

18 Q And shipping in excess of 8,000 pills --  
19 controlled substances to a customer without  
20 conducting such a Level I, Level II or Level III  
21 review would have been a violation of the program?

22 MR. STANNER: Same objection.

23 THE WITNESS: I don't know if I would  
24 classify it as a violation.

1 BY MR. HAWAL:

2 Q Well, what would you classify it as?

3 A Just a -- it was a -- that was how the  
4 policy was -- or the program was structured.

5 Q Well --

6 A It wasn't -- it wasn't a legal  
7 obligation to do it in that manner.

8 Q Well, the program was created in an  
9 effort to prevent diversion of controlled  
10 substances. Can we agree to that?

11 MR. STANNER: Again, same objection.

12 THE WITNESS: I think it was -- I  
13 don't -- I don't really know why it was -- I mean  
14 I wasn't here at that time, so I don't know that I  
15 can speak to what the intent was at that time.

16 BY MR. HAWAL:

17 Q Well, can -- can you think of another --  
18 I mean you -- you just talked about the -- that  
19 your familiarity with certain components of the  
20 program that set thresholds for certain controlled  
21 substances like oxycodone and hydrocodone at 8,000  
22 required an investigation if the customer ordered  
23 more than the threshold.

24 Can you think of any reason for those

1 policies at McKesson other than to prevent  
2 diversion?

3 MR. STANNER: Same objection.

4 THE WITNESS: I think it was twofold. I  
5 think one was to understand and identify and  
6 prevent diversion, and also to understand  
7 legitimate businesses and the service of those  
8 legitimate businesses.

9 BY MR. HAWAL:

10 Q And given that understanding and -- and  
11 your knowledge of those policies that were in  
12 effect, if a customer exceeded the threshold  
13 without a Level I, Level II or Level III  
14 investigation by McKesson, and the product was  
15 shipped, that would have been in violation of its  
16 own policies, true?

17 MR. STANNER: Same objection.

18 THE WITNESS: I believe that that would  
19 be correct, yes.

20 BY MR. HAWAL:

21 Q As of 2011, did you make occasional  
22 public statements expressing your frustration as a  
23 DEA agent whereby you believed that certain  
24 distributors were not following their obligations

1 under the law to prevent diversion of controlled  
2 substances?

3 A I'm not sure that I agree with the  
4 characterization of it being my frustration. I --  
5 I'm sure that I -- during that time frame, I made  
6 public statements on a variety of different  
7 topics.

8 Q Well, did you make some public  
9 statements that were critical of distributors with  
10 respect to violating their obligations under the  
11 law to prevent diversion of controlled substances?

12 A If you have a specific example that we  
13 could talk about --

14 Q Well, we --

15 A -- I would be more than happy to. I --  
16 I don't recall every --

17 Q You don't recall ever doing that?

18 A I don't recall every statement I made.

19 Q Do you recall making a statement to  
20 USA Today which was published in 2012?

21 A During my time at DEA, I made dozens of  
22 statements to the media. I don't recall off --  
23 any one in particular.

24 MR. HAWAL: I think we're on Exhibit 6.

1 (Plaintiffs' Exhibit No. 6 was  
2 marked for identification.)

3 MR. HAWAL: I'm going to use the ELMO.

4 BY MR. HAWAL:

5 Q Mr. Boggs, I'm handing you what has been  
6 marked as Exhibit 6. Is an article that was in  
7 the USA Today on February 28, 2012, where it says:  
8 "DEA aims big to stem painkiller black market."  
9 And then below that it says: "Cardinal Health  
10 says it didn't look the other way."

11 Do you remember seeing this article at  
12 or near the time that it came out?

13 A I don't recall it, no.

14 Q All right. If we go to -- I think it's  
15 the fourth page, it attributes certain statements  
16 to you. And the paragraph starts with: "'Within  
17 the closed system, each license holder has  
18 responsibilities to maintain control of the drugs  
19 and keep them from getting to illegitimate  
20 players,' DEA Special Agent Gary Boggs said."

21 First of all, is that an accurate  
22 statement?

23 MR. STANNER: Object to the form, vague.

24 THE WITNESS: The registrants have a

1 legal obligation to maintain effective controls --

2 BY MR. HAWAL:

3 Q So it is --

4 A -- against diversion.

5 Q It is an accurate statement.

6 A I agree.

7 Q And do you deny having made that  
8 statement to a USA Today reporter in that context?

9 A I don't.

10 Q Do you deny having a conversation with a  
11 USA Today reporter about the subject of diversion  
12 of controlled substances and distributors'  
13 obligations?

14 A I do not.

15 Q Okay. And then it goes on to say:

16 "'The law requires distributors, such as Cardinal  
17 Health, to have systems to detect suspicious  
18 orders, which must then be reported to the DEA.  
19 The Agency repeatedly warns distributors that the  
20 size of an order alone triggers the distributors'  
21 responsibility to report it to the DEA,' Boggs  
22 said."

23 First of all, was that an accurate  
24 statement?

1 MR. STANNER: Object to the form.

2 Accurate that it's there, or accurate that he said  
3 it, or is the statement itself substantively  
4 accurate?

5 THE WITNESS: I believe you read it  
6 correctly.

7 BY MR. HAWAL:

8 Q Well, is it -- is it a true statement?

9 A It's a paraphrase of the regulation,  
10 yes.

11 Q Again, do you have any reason to deny  
12 having made that statement to a USA Today  
13 reporter?

14 A I do not.

15 Q Then it says: "'Distributors must cut  
16 sales to those drugstores with suspicious orders,  
17 even if they have a valid DEA license,' he said."

18 Is that also a true statement?

19 MR. STANNER: Same objection.

20 THE WITNESS: I don't know that I agree  
21 with the characterization of that. We have an  
22 obligation to maintain effective controls against  
23 diversion, and if that means stopping sales, that  
24 could be, based upon the facts and circumstances,

1 the outcome.

2 BY MR. HAWAL:

3 Q And then it has a statement in  
4 quotations: "If all those players involved are  
5 either complicit or not doing their due diligence  
6 correctly, that whole system comes tumbling down."

7 Do you disagree that you made that  
8 statement?

9 A I don't.

10 Q And then below that it has further  
11 statements attributable to you. It says:  
12 "'Distributors can act more quickly than law  
13 enforcement if they know something is wrong,'  
14 Boggs said."

15 Do you have any reason to dispute having  
16 said that statement?

17 MR. STANNER: Again, I'm going -- I'm  
18 going to object to the foundation on all the  
19 questions that are clearly paraphrases and not  
20 quotations.

21 BY MR. HAWAL:

22 Q Do you agree -- do you have any reason  
23 to disagree that you made such a statement or a  
24 statement to that effect?

1           A       I do not.

2           Q       And then it goes on to say: "'We have  
3   to investigate things in a different manner than a  
4   company that can act on a suspicious order. We  
5   have to meet constitutional and legal  
6   requirements. They don't have to sell to  
7   someone,' Boggs said. 'They have a moral  
8   obligation as keepers of powerful and dangerous  
9   substances to make sure those substances are used  
10  for legitimate medical purposes.'"

11                   Do you have any reason to dispute having  
12  made those statements?

13           A       I do not.

14           Q       Looking at the context of these  
15  statements and in terms of what this article is  
16  reported to be about, would it be fair to say that  
17  you as a DEA agent at the time were expressing  
18  dissatisfaction or frustration with certain  
19  distributors as to their failure to maintain  
20  effective controls to prevent the diversion of  
21  controlled substances?

22                   MR. STANNER: Object to the form.

23                   MR. SATIN: And I -- objection. I'm  
24  objecting pursuant to Touhy.

1 I don't quite understand the question.  
2 You can ask him about what he said but not why he  
3 said it or what was going on at DEA at the time  
4 that may have informed this statement.

5 MR. HAWAL: Counsel, this -- this is --  
6 he clearly made a public statement, and I believe  
7 that the Touhy requirements allow me to explore  
8 the circumstances of this public statement. I  
9 don't understand how you can object in the context  
10 of what he says here.

11 MR. SATIN: So I -- I had a conversation  
12 with the AUSA, Mr. Bennett, on this subject, and  
13 while it's permissible to ask about the fact of  
14 those public statements, but what is behind those  
15 statements, the circumstances, the motives, the  
16 background material, that is off-limits. That's  
17 an issue you'll have to take up with the  
18 government.

19 MS. KASWAN: We've been going quite a  
20 while. Can we take a break?

21 MR. STANNER: The witness is fine, so  
22 we're happy to keep going. Obviously, people  
23 should feel free to use the restroom.

24 MS. KASWAN: I could use a break.

1 THE VIDEOGRAPHER: The time is  
2 11:24 a.m. We're going off the record.

3 (Recess.)

4 THE VIDEOGRAPHER: The time is  
5 11:41 a.m., and we're back on the record.

6 BY MR. HAWAL:

7 Q Mr. Boggs, continuing on with the  
8 USA Today article that we've been discussing,  
9 there's another statement that is attributable to  
10 you, and it says: "'You can have the ostrich  
11 approach. You can stick your head in the sand and  
12 ignore blatant signs,' Boggs said."

13 And then it goes on to say: "This  
14 company is sitting in a state that has been the  
15 epicenter of the problem. It's no secret that the  
16 drug of choice is oxycodone. I don't think you  
17 have to be that strong of an investigator to put  
18 two and two together," close quote.

19 Are those statements that you would have  
20 made?

21 MR. STANNER: Object to the form of the  
22 question, the word "attributable."

23 THE WITNESS: I -- I believe that  
24 they're correct, yes.

1 BY MR. HAWAL:

2 Q Were these -- were these the kinds of  
3 statements that are attributive -- attributed to  
4 you in this article that you would have been  
5 generally making during this frame?

6 MR. STANNER: Object to the form of the  
7 question.

8 BY MR. HAWAL:

9 Q In 2012.

10 MR. STANNER: Same objection.

11 THE WITNESS: I don't know that I  
12 understand your question when you say --

13 BY MR. HAWAL:

14 Q Well --

15 A -- "generally making."

16 Q Well, were these the kinds of statements  
17 that you were generally making to individuals who  
18 would have been inquiring about the opioid crisis  
19 and certain distributors not living up to their  
20 obligations under federal regulations?

21 MR. SATIN: Counsel, I'm sorry to  
22 interrupt. Are you asking about statements he was  
23 making --

24 MR. HAWAL: In the public domain.

1 MR. SATIN: -- in the public domain?

2 MR. HAWAL: Yes, sir.

3 THE WITNESS: This is a statement I made  
4 in this particular article. I don't recall every  
5 statement that I made during that time frame.

6 BY MR. HAWAL:

7 Q Let me ask you this: When you left DEA,  
8 did you get some type of clearance from the DEA to  
9 go work for McKesson?

10 A I believe that I was interviewed by  
11 McKesson counsel on -- on that.

12 Q Well, I'm not so concerned about  
13 McKesson's counsel. But did you seek clearance  
14 from the DEA to go work for a distributor?

15 A I don't recall doing that, no.

16 Q So you don't have any type of written  
17 agreement with the DEA that allowed you to go work  
18 for McKesson?

19 A I do not.

20 Q Okay. So as far as you know, there were  
21 no restrictions placed upon you by the DEA as to  
22 what you could or could not communicate with  
23 McKesson about as it relates to your pre, or --  
24 prior employment with the DEA?

1 MR. STANNER: Object to the form of the  
2 question.

3 THE WITNESS: I don't have any  
4 restrictions that I'm aware of, no, other than  
5 what we're talking about today.

6 MR. STANNER: Mr. Hawal, I think someone  
7 on the phone is complaining about the microphones.

8 Can the people on the phone hear us?

9 (UNIDENTIFIED SPEAKER): It sounds like  
10 the mics have been turned down a little bit. I  
11 don't know if there's a way to adjust the volume.  
12 We were fine before the break.

13 MR. STANNER: I think we just tried to  
14 do that. Has there -- have you -- have you  
15 noticed any change? We just tried -- we just  
16 changed the volume.

17 (UNIDENTIFIED SPEAKER): No, not yet.

18 THE VIDEOGRAPHER: Do you hear anything  
19 better now?

20 (UNIDENTIFIED SPEAKER): Yes. Much  
21 better. Thank you.

22 MR. STANNER: Great. If people on the  
23 phone could mute their phones, that would be very  
24 helpful. Thanks.

1 (Plaintiffs' Exhibit No. 7 was  
2 marked for identification.)

3 BY MR. HAWAL:

4 Q Mr. Boggs, I'm handing you what has been  
5 marked as Plaintiffs' Exhibit 7, which is a  
6 different article but also from 2012. And this  
7 was published in Bloomberg Businessweek. The  
8 title of the article is "American Pain: The  
9 Largest U.S. Pill Mill's Rise and Fall." "There  
10 were 335 million prescriptions for painkillers  
11 written in 2011. Is it any wonder some of them  
12 were from criminals?"

13 And my question is, do you recall being  
14 interviewed by someone from Bloomberg Businessweek  
15 at or around this time where you made certain  
16 statements that were -- that appeared in this  
17 article?

18 A I do not.

19 Q I'm going to put on the screen a  
20 paragraph that has certain statements that are  
21 attributable to you. And it says: "Gary Boggs,  
22 Special Agent with the DEA's Office of Diversion  
23 Control says, 'The cases that the DEA has brought  
24 in recent years involved wholesalers knowingly

1 making enormous sales to customers that were  
2 per se in violation of DEA rules. The notion put  
3 out by HDMA that somehow or another the DEA is not  
4 providing essential information to them is simply  
5 not accurate,' says Boggs. 'It's a smoke screen.  
6 It's a step out of desperation.'"

7 Do you remember making such statements  
8 in 2012?

9 MR. STANNER: Object to the form,  
10 compound. Vague if you're referring to the  
11 quotation on the preceding sentence.

12 MR. HAWAL: Yes.

13 BY MR. HAWAL:

14 Q Do you -- do you remember making such  
15 statement?

16 MR. HAWAL: I'm sorry?

17 MR. STANNER: I'm sorry, you said,  
18 "Yes." Do you mean -- are you referring just to  
19 the quotation --

20 MR. HAWAL: Yes.

21 MR. STANNER: -- or to the entire --

22 MR. HAWAL: Yeah, quotations.

23 THE WITNESS: I -- I don't recall making  
24 them.

1 BY MR. HAWAL:

2 Q Were these statements that were  
3 consistent with statements that you would have  
4 been making at that time in the public domain?

5 A It appears a statement that I made for  
6 this article.

7 Q Okay. And in -- in June of 2012, were  
8 you still a DEA employee or had you retired as of  
9 that time?

10 A I retired at the end of that month.

11 Q Okay. I'm going to hand you another  
12 exhibit. I think we're at Exhibit 8.

13 (Plaintiffs' Exhibit No. 8 was  
14 marked for identification.)

15 BY MR. HAWAL:

16 Q With regard to the statement that was in  
17 the Bloomberg publication, you referred to HDMA.  
18 HDMA is the trade association for pharmaceutical  
19 wholesalers like McKesson and Cardinal and  
20 AmerisourceBergen?

21 A It was formerly HDA -- or HDMA. Now  
22 it's HDA. Yes, it is.

23 Q And you have attended HDMA meetings?

24 MR. SATIN: Are you asking about since

1 he left the government or before?

2 BY MR. HAWAL:

3 Q Well, let's talk about since you left  
4 the DEA, have you attended HDMA meetings?

5 A I don't believe I have, no.

6 Q Sir, I'm handing you Exhibit No. 8,  
7 which is a summary of a DEA/HDMA meeting,  
8 December 19th, 2011. At the bottom, there's a  
9 bottom paragraph that discusses statements  
10 attributable to you.

11 In two thousand -- in December of 2011,  
12 would you have stated that: "The DEA's single  
13 greatest concern was the belief that wholesale  
14 distributors were lax in analysis, review and  
15 acting on their own ARCOS data"?

16 MR. SATIN: Mr. Boggs, I'm going to  
17 object to the extent that question calls for you  
18 to disclose non-public information based on your  
19 work when you were at DEA.

20 THE WITNESS: I don't believe I can  
21 answer that question.

22 BY MR. HAWAL:

23 Q At that time, would you have stated that  
24 the data that you were seeing from wholesalers

1 was, quote, pretty egregious, close quote?

2 MR. SATIN: Same instruction.

3 BY MR. HAWAL:

4 Q Would you have said that: "The DEA had  
5 not seen" --

6 MR. HAWAL: The next page, Evan.

7 BY MR. HAWAL:

8 Q -- "had not seen changes in registrants'  
9 behavior that it expected after presenting its  
10 analysis of ARCOS data to them, so we have upped  
11 our game"?

12 MR. SATIN: Same instruction.

13 THE WITNESS: I don't believe at this  
14 time I can answer that question.

15 BY MR. HAWAL:

16 Q The second paragraph of that page says  
17 that: "DEA stressed this point repeatedly  
18 throughout the meeting. They seemed frustrated  
19 and stated this was occurring even among wholesale  
20 distributors that had been in DEA's suspicious  
21 educational meetings and even among those who had  
22 suspicious SO monitoring programs."

23 "SO" would be suspicious order  
24 monitoring programs?

1           A       That's what it says in the document,  
2   yes.

3           Q       "Their belief is that if the wholesale  
4   distributors were to look at their own data,  
5   problem customers would be very evident."

6                       Were these statements that you were  
7   convey -- conveying to the distributor trade --  
8   trade organization, trade association during this  
9   time frame?

10                   MR. SATIN:   Same --

11                   MR. STANNER:   Object --

12                   MR. SATIN:   Same instruction.

13                   MR. STANNER:   Object to the form of the  
14   question.

15                   THE WITNESS:   I don't believe at this  
16   time I can answer that question.

17   BY MR. HAWAL:

18           Q       Mr. Boggs, since you went to McKesson,  
19   were you aware or did you become aware that the  
20   DEA continued to investigate McKesson and its  
21   failures to live up to the 2008 settlement  
22   agreement and its own obligations that it assumed  
23   as a part of that agreement?

24                   MR. STANNER:   Objection to the form of

1 the question, compound, vague, misstates.

2 THE WITNESS: I'm aware since I came to  
3 McKesson that there had been an investigation of  
4 the company related to that, that resulted in a  
5 settlement, yes.

6 BY MR. HAWAL:

7 Q And have you undertaken since you joined  
8 McKesson to look at the basis for the charges by  
9 the Department of Justice and the DEA that led to  
10 the later settlement by McKesson?

11 MR. STANNER: Object to the form of the  
12 question. I object to the use of the word  
13 "charges by the Department of Justice." I'm not  
14 aware of any such thing.

15 THE WITNESS: I have -- I reviewed the  
16 settlement agreement and the terms within the  
17 settlement agreement.

18 BY MR. HAWAL:

19 Q Was it any part of your obligation or  
20 job function to look at McKesson's failures since  
21 2008 in order to try and correct them or improve  
22 McKesson's Controlled Substance Monitoring  
23 Program?

24 MR. STANNER: Object to the form, vague.

1                   THE WITNESS: There are certain terms  
2     and requirements under that settlement agreement  
3     that I'm responsible for overseeing that, and part  
4     of my job is to oversee ways that we can continue  
5     to evolve and improve our program to make sure  
6     that we're doing the best that we can to adhere to  
7     our regulation -- our regulatory obligations.

8     BY MR. HAWAL:

9                   Q     Well, would you agree with me that it  
10    would be difficult to make improvements if one  
11    didn't go back and determine where improvements  
12    were necessary or needed?

13                  MR. STANNER: Object to the form,  
14    misstates the testimony.

15                  THE WITNESS: I -- I think in some times  
16    that's an opportunity to do that. I think other  
17    times you have to take into consideration that,  
18    you know, what may or may not have led to some  
19    issues that, you know, many years ago was for a  
20    different time and different type of diversion  
21    scheme where the red flags may have been different  
22    than what they are today.

23                  So I want to make sure that I'm not  
24    looking at things that are no longer valid in

1 today's environment, so I'm looking more forward  
2 and what is today's thread, if you will, of  
3 diversion, and how best that we can identify that.  
4 Not necessarily looking retrospective to schemes  
5 that are no longer a relevant factor.

6 BY MR. HAWAL:

7 Q Well, you would agree generally that if  
8 one doesn't look at past mistakes, one won't learn  
9 from their past mistakes. Is that true?

10 MR. STANNER: Object to the form of the  
11 question.

12 THE WITNESS: I think that that's  
13 generally a -- a solid thing.

14 (Plaintiffs' Exhibit No. 9 was  
15 marked for identification.)

16 MR. HAWAL: Evan, 880.

17 BY MR. HAWAL:

18 Q Mr. Boggs, I've handed you what has been  
19 marked as Plaintiffs' Exhibit 9, bearing Bates  
20 stamp MCK-AGMS-0060000880.

21 It is a PowerPoint presentation, "State  
22 of Prescription Drug Abuse," with McKesson's name  
23 at the top, and your name and the term "Olive  
24 Branch."

1 Do you recall this PowerPoint  
2 presentation?

3 A I do.

4 Q Did you have a chance to review this  
5 when you were preparing for this deposition with  
6 your counsel?

7 A I --

8 MR. STANNER: Objection to the extent it  
9 calls for privileged information.

10 BY MR. HAWAL:

11 Q Did you review this?

12 A I've looked at this document, yes.

13 Q As part of your preparation for this  
14 deposition?

15 A I did.

16 Q And this was prepared -- what does  
17 "Olive Branch" mean?

18 A Olive Branch is where the McKesson's  
19 national redistribution center is. It's Olive  
20 Branch, Mississippi.

21 Q Okay. And this would have been prepared  
22 after you left the DEA?

23 A It would.

24 Q Did it contain information that you

1 would have learned or become aware of when you  
2 worked for the DEA?

3 A It did. It does.

4 Q Did you seek and obtain any clearance  
5 from the DEA to make this presentation or put this  
6 material together?

7 A I did not.

8 Q Now, when you reviewed this PowerPoint  
9 presentation, did it appear to you to be correct  
10 and accurate? Was there anything -- or was there  
11 anything that stood out as being inaccurate or  
12 that you deemed required correction?

13 A I --

14 MR. STANNER: You're asking -- I'm  
15 sorry, Counsel, you're asking at the time it was  
16 prepared or since then?

17 MR. HAWAL: No, when you -- when he  
18 reviewed it in preparation for his deposition.

19 MR. STANNER: My mistake.

20 THE WITNESS: When I reviewed it, it  
21 appeared to be an accurate representation of the  
22 presentation that I gave.

23 BY MR. HAWAL:

24 Q And when was it presented and -- and

1     where?

2             A     It was presented at the national  
3     redistribution center, McKesson's national  
4     redistribution center in Olive Branch,  
5     Mississippi. It would have been probably sometime  
6     in the summer of 2013.

7             Q     And this was when you were retained to  
8     be a consultant for McKesson?

9             A     It was.

10            Q     And who was in attendance for you to  
11     present this to?

12            A     The individuals that were part of  
13     McKesson's Regulatory Affairs program were in  
14     attendance. There were representatives at the  
15     distribution center leadership team, such as a  
16     distribution center manager or a distribution  
17     center director of operations from across the  
18     country were in attendance. Don Walker was in  
19     attendance. There were several other individuals.  
20     I don't recall every single one of them.

21            Q     When you prepared this PowerPoint  
22     presentation, were you using and/or including  
23     information which you considered to be accurate?

24            A     I was using information related to

1 the -- the presentation. I mean, I --

2 Q Well, did you --

3 A -- I wasn't trying to provide any  
4 inaccurate information.

5 Q Well, I assume that when you were making  
6 this presentation to McKesson, you were intending  
7 to provide accurate information, true, as you  
8 understood it?

9 A Absolutely.

10 Q Okay. And the title of the -- on the  
11 next page is "The Impact of Effective Compliance:  
12 Protecting America from Prescription Drug  
13 Diversion."

14 Is that a title that you created?

15 A It is.

16 Q And if we go to page 883, you have two  
17 planes colliding, and you're referring to two  
18 drugs, two opioid drugs, oxycodone and Percocet.

19 What was your purpose of having two  
20 airplanes colliding in midair with that slide?

21 A The purpose is to grab the attention of  
22 the audience and recognize something significant.

23 Q Okay. And the last bullet point on that  
24 page, you indicate that "Manufacturers fueled the

1 use of prescription painkillers."

2 What did you mean by that statement?

3 A What I meant by that statement, which is  
4 reflected in the -- the next slide, is an example  
5 of a manufacturer who was involved in an  
6 investigation or a settlement with the government  
7 that was about the false or misleading of  
8 OxyContin, which was specifically to Purdue  
9 Pharma.

10 Q And the next page references Purdue  
11 Pharma in a \$635 million fine that was imposed on  
12 Purdue for misleading advertising about its  
13 OxyContin product?

14 A That's correct.

15 Q And you -- you consider that to be one  
16 of the causes of the opioid crisis in the United  
17 States?

18 MR. STANNER: Object to the form of the  
19 question.

20 THE WITNESS: I think it has a  
21 contributing factor, yes.

22 BY MR. HAWAL:

23 Q And then the next page, you reference a  
24 company, Cephalon, in a \$425 million fine, which

1 it ended up agreeing to pay as a result of  
2 inappropriate marketing of its drug fentanyl?

3 A That's correct.

4 Q Again, a factor that you considered to  
5 be contributing to the opioid crisis in the United  
6 States?

7 MR. STANNER: Object to the form.

8 THE WITNESS: I did.

9 BY MR. HAWAL:

10 Q And then the next page you have a chart  
11 or graph depicting rising opioid deaths, sales,  
12 and treatment admissions from 1999 to 2010.  
13 Correct?

14 A I do.

15 Q Would you agree, sir, that as -- the  
16 quantity of opioids that are diverted into the  
17 illicit marketplace has a direct relationship to  
18 increases in deaths of patients as well as  
19 treatment admissions?

20 MR. STANNER: Object to the --

21 MR. SATIN: Objection to form.

22 MR. STANNER: Object to the form of the  
23 question, use of the phrase "diverted into the  
24 illicit marketplace."

1 THE WITNESS: I don't think that that's  
2 what this slide represents, so I don't agree with  
3 the way you've characterized that.

4 BY MR. HAWAL:

5 Q So are you saying that you do not agree  
6 that as greater amounts of opioid pills are  
7 diverted into the illicit marketplace, that the  
8 probability is that the number of addictions and  
9 deaths will increase?

10 MR. STANNER: Same -- same objection. I  
11 think it --

12 MR. HAWAL: I understand. All you have  
13 to do is say, "Objection," Andrew.

14 MR. STANNER: Okay.

15 MR. HAWAL: That would be appreciated,  
16 because the rules require no speaking objections.

17 MR. STANNER: I'm just trying to be  
18 helpful.

19 BY MR. HAWAL:

20 Q Sir?

21 MR. HAWAL: I understand. Thank you.

22 THE WITNESS: I -- I think there is a  
23 correlation between diversion and -- and  
24 associated problems with diversion.

1 BY MR. HAWAL:

2 Q Well, true. And the greater the amount  
3 of diversion, the greater the likelihood is of  
4 ensuing harm, such as addiction and death. True?

5 A I believe that's a fair statement, yes.

6 Q What was the source of this information  
7 used to create this graph or chart?

8 A I -- I don't recall.

9 Q And two slides later, you have "Checks  
10 and Balances under the CSA."

11 CSA refers to the Controlled Substances  
12 Act?

13 A It does.

14 Q And are you quoting the Act as to what  
15 the obligations of a wholesaler are in order to  
16 identify a controlled substance -- or identify  
17 suspicious orders as part of its obligation to  
18 prevent diversion?

19 A Not --

20 MR. STANNER: Object to form.

21 THE WITNESS: I'm sorry.

22 Not necessarily the Act but the  
23 implementing regulation. This is part of the  
24 regulation. But, yes, I'm quoting that.

1 BY MR. HAWAL:

2 Q And you have a slide, and,  
3 unfortunately -- well, let me reference the Bates  
4 number, 892, where you have a graph -- well, you  
5 have photograph depicting what can happen when the  
6 types of checks and balances are not followed,  
7 correct, and you have a collapsing building?

8 A That's what's on the slide, yes.

9 Q Are you trying to emphasize how  
10 important it is for distributors like McKesson to  
11 strictly follow their legal obligations under the  
12 Controlled Substances Act and the federal  
13 regulations relating to controlled substances?

14 A What I'm trying --

15 MR. STANNER: Object to the form,  
16 compound.

17 THE WITNESS: What I'm trying to depict  
18 here is, is all of the members within the closed  
19 system of distribution, which would include  
20 distributors, but it's not just isolated to them.  
21 It's for all of them, all the --

22 BY MR. HAWAL:

23 Q Including --

24 A -- responsible --

1 Q Including manufacturers of opioids,  
2 right?

3 A And pharmacists -- or pharmacies and  
4 pharmacists and doctors.

5 Q On page 897, you reference "Florida pill  
6 mills, resulting oxy spills."

7 Was there a particular problem in  
8 Florida in the late 2000s, including 2009 and  
9 2010, as it related to large quantities of opioids  
10 being diverted into the illicit marketplace?

11 A There was a significant diversion scheme  
12 related to pain -- rogue pain clinics or what were  
13 often referred to as pill mills.

14 Q And where were those pill mills getting  
15 their OxyContin, do you recall?

16 MR. STANNER: Object to the form.

17 MR. SATIN: And objection to the extent  
18 it's asking for you to disclose information from  
19 the -- your official work at DEA.

20 THE WITNESS: I don't think I can answer  
21 that question at this time.

22 BY MR. HAWAL:

23 Q Well, did you tell your audience when  
24 you presented this slide in 2013 what the source

1 of the OxyContin was in Florida?

2 MR. STANNER: Object to the form,  
3 "source."

4 THE WITNESS: Well, this is not related  
5 specifically to OxyContin. This is related to  
6 oxycodone, which is --

7 BY MR. HAWAL:

8 Q Okay. Oxycodone. I apologize.

9 A -- which is broader.

10 Q Did you tell your audience where the  
11 oxycodone was being obtained?

12 MR. STANNER: Same objection.

13 THE WITNESS: I don't recall.

14 BY MR. HAWAL:

15 Q Do you recall that it was from -- at  
16 least partially from Mallinckrodt?

17 MR. SATIN: Same --

18 MR. STANNER: Same objection.

19 MR. SATIN: Same instruction.

20 THE WITNESS: I don't believe I made  
21 that statement at all.

22 BY MR. HAWAL:

23 Q On the next slide, 898, you indicated  
24 oxycodone deaths in Florida rose from 340 in 2005

1 to 1516 in 2010, a 346 percent increase.

2 Do you recall where you obtained that  
3 information?

4 A I believe I obtained that information  
5 from the Florida Medical Examiner's public  
6 website.

7 Q And then on page 903, you have a slide  
8 that references: "A national epidemic: More than  
9 45 people die per day from prescription opioids."  
10 And then you have some statistics.

11 And then you have the last sentence:  
12 "Economic impact to America, \$57 billion per  
13 year."

14 Do you recall where you obtained that  
15 data?

16 A I believe there was a study published  
17 that was publicly available on the internet that I  
18 obtained that from. I don't recall the -- the  
19 exact study, but I recall obtaining it off of the  
20 internet.

21 Q And -- and do you -- and do you recall  
22 what kind of economic impact was being measured  
23 when it was being referred to as 57 -- \$57 billion  
24 per year?

1           A     I don't recall specifically, no. There  
2     was several different areas. I just don't recall  
3     specifically which ones.

4           Q     Well, was it -- was it primarily  
5     economic impact or largely economic impact to  
6     municipalities, counties and states --

7                     MR. STANNER: Object to the form.

8     BY MR. HAWAL:

9           Q     -- across the United States?

10                    MR. STANNER: Sorry. Object to the  
11     form, asked and answered.

12                    THE WITNESS: I don't recall it being  
13     that specific. I recall it being more of -- loss  
14     in work productivity, things like that, addiction  
15     or something like that. But I don't recall it  
16     specifically drilling down to what a county or  
17     city would -- the amount attributable to that. I  
18     don't recall that. I recall it more lost wages,  
19     lost productivity.

20     BY MR. HAWAL:

21           Q     Have you seen any studies or statistics  
22     that reference the cost to communities, both  
23     cities and counties and states, as it relates to  
24     the economic impact of the opioid crisis?

1 MR. STANNER: Object to the form.

2 THE WITNESS: Not that I recall  
3 specifically that, no.

4 BY MR. HAWAL:

5 Q The next slide says: "Are we  
6 contributing to the problem," question mark.

7 Are you -- you're referring to  
8 distributors, right?

9 A I am.

10 Q And you're referencing problems that you  
11 have seen as to what a distributor -- what certain  
12 distributors have been doing to contribute to the  
13 opioid crisis, correct?

14 A The bullets that are in here are focused  
15 specifically on a diversion scheme, and in this  
16 case it would have been a pill mill or rogue pain  
17 clinic. But that -- that was the focus of -- of  
18 this particular slide and what some of the bullets  
19 might be associated with that.

20 Q Well, a pill mill is not going to get  
21 pills unless it gets them directly from a  
22 distributor or manufacturer, correct?

23 MR. STANNER: Object to the form.

24 THE WITNESS: Generally speaking, that's

1 true.

2 BY MR. HAWAL:

3 Q Yeah. And are you trying to emphasize  
4 that part of the problem that was occurring with  
5 certain pill mills is that distributors were  
6 shipping controlled substances in exorbitant  
7 amounts as one factor?

8 MR. STANNER: Same objection.

9 THE WITNESS: I believe it was more of  
10 in terms of a specific or cumulative amounts that  
11 would be going to a single location over a period  
12 of time.

13 BY MR. HAWAL:

14 Q I mean, for example, if a small  
15 community in a given state that has, you know, 600  
16 adults -- you know, a population of 600 adults and  
17 is getting hundreds of thousands of opioid pills  
18 provided to one pharmacy in such a small  
19 community, that would indicate to you an example  
20 of an exorbitant amount of pills going to a  
21 potentially suspicious customer. Fair?

22 A It could be, yes.

23 Q This PowerPoint also supports the  
24 proposition that the greater the number of opioid

1 pills diverted, that the greater the likelihood of  
2 harm to patients. True?

3 A I'm sorry, where are we at? Which slide  
4 are you on?

5 Q The same one that we've been  
6 referencing. I mean that's -- that supports  
7 the --

8 A I'm not sure which bullet you're looking  
9 at.

10 Q Well, I'm looking at the entire -- the  
11 totality of the bullet points that you raise in  
12 this that would support the notion that the  
13 greater number of opioid pills that are diverted,  
14 the greater the likelihood of harm that is caused.  
15 True?

16 MR. STANNER: Object to the form.

17 THE WITNESS: I don't think that that's  
18 what this slide -- this slide doesn't talk about  
19 harm.

20 BY MR. HAWAL:

21 Q Well, what other than harm would result  
22 from an exorbitant amount of pills being shipped  
23 to a given community where there's a known  
24 epicenter of diversion?

1 MR. STANNER: Same -- same objection.

2 THE WITNESS: I mean there can be  
3 certain situations where an exorbitant amount is  
4 totally legitimate. I mean on its face,  
5 exorbitant amount is a red flag. It doesn't  
6 necessarily mean where you can jump to the  
7 conclusion an exorbitant amount automatically is  
8 diversion.

9 BY MR. HAWAL:

10 Q I'm not -- I'm not saying automatically,  
11 but generally speaking, would you agree that an  
12 exorbitant amount going to a small community that  
13 is also in the epicenter of diversion, that that  
14 would be consistent with a greater degree of harm?

15 A I think it requires a greater -- you  
16 know, more diligence to determine what's going on  
17 and what the factors are there, and maybe it's  
18 diversion or maybe there's a legitimate reason.

19 Q Well, are you -- are you -- did you  
20 create this slide because you knew that this had  
21 been happening?

22 A I created this slide because of the  
23 rogue pill mills in Florida.

24 Q So you knew that this was happening,

1     exorbitant amounts of -- of opioids were being  
2     provided to certain customers by distributors in  
3     areas that were known to be epicenters of  
4     diversion.    True?

5                   MR. STANNER:   Object to the form.

6                   THE WITNESS:   For the pill mill, yes,  
7     that was the purpose of the slide.

8     BY MR. HAWAL:

9                 Q     And each of these factors would be a  
10    potential red flag that a distributor should be  
11    looking at.    Correct?

12                A     They are -- they are red flags that you  
13    should look at, yes.

14                Q     And these would be red flags that would  
15    not have been first known in 2013, but would have  
16    been red flags that distributors should have been  
17    aware of for many years.    True?

18                   MR. STANNER:   Object to the form.

19                   THE WITNESS:   I don't know that that's  
20    necessarily the case.   We're -- we're talking  
21    about a couple of significant diversion schemes  
22    that occurred at a period of time that have  
23    never -- never happened before in this country.  
24    So the red flags sometimes are very specific to

1 that criminal scheme that may not be applicable to  
2 other types of schemes or other day-to-day  
3 operations of regular pharmacies or practitioners.

4 BY MR. HAWAL:

5 Q Well, sir, if a -- if a distributor in  
6 2005 was aware that these red flags were occurring  
7 in a given community or related to a given  
8 customer, should these have been red flags in 2005  
9 as well as they were in 2013?

10 MR. STANNER: Object to the form.

11 MR. SATIN: And objection. Don't answer  
12 that if you're going to disclose non-public  
13 information that you obtained while at the DEA.

14 THE WITNESS: I think that they are red  
15 flags, yes.

16 BY MR. HAWAL:

17 Q Now, going to slide 907. "Communication  
18 Advanced Warnings." These are bullet points that  
19 indicate how distributors should have been aware  
20 of their obligations to prevent diversion.  
21 Correct?

22 MR. STANNER: Object to the form.

23 THE WITNESS: These -- these are some  
24 indicate -- or some examples of where information

1 was available to distributors, yes.

2 BY MR. HAWAL:

3 Q And the next slide refers to ARCOS data.  
4 What were you intending to communicate with that  
5 slide?

6 A That we need to as a distributor look at  
7 the data, the ARCOS data, and look as -- at that  
8 and whether or not there's any indication in there  
9 that we need to follow up on.

10 Q And when you reference -- when you're  
11 referring to ARCOS data, you're referring to data  
12 that distributors have relating to the quantity of  
13 different opioids that are being distributed to  
14 given customers?

15 A Specific -- ARCOS data specific to that  
16 distributor.

17 Q Yes.

18 A It's not all-encompassing --

19 Q Right.

20 A -- of what is going to a customer.

21 Q I mean, for example, McKesson has  
22 information in its data or its -- in its system  
23 which identifies over time how many pills --  
24 individual pills of a given opioid were

1 distributed to a given customer. True?

2 MR. STANNER: Object to the form.

3 THE WITNESS: That McKesson distributed,  
4 yes.

5 BY MR. HAWAL:

6 Q Right. And early warning sign for an  
7 emerging trend would reflect -- would reflect your  
8 message to McKesson as to the importance of  
9 looking at the quantity of controlled substances  
10 that are being supplied to given customers, right?

11 MR. STANNER: Object to the form.

12 THE WITNESS: That's correct.

13 BY MR. HAWAL:

14 Q And then on slide 920, you have a slide  
15 that's identified "Detecting Suspicious Orders,"  
16 and I assume that you were informing the McKesson  
17 employees that were at the presentation that it's  
18 important to look at red flags. Correct?

19 A That's correct.

20 Q And not only have employees be vigilant  
21 about individual customers, but also listening to  
22 those employees when they identify signs that are  
23 suspicious for diversion?

24 MR. STANNER: Object to the form.

1 THE WITNESS: That's correct.

2 BY MR. HAWAL:

3 Q And that would be part of the onboarding  
4 process when a new customer is coming to McKesson  
5 for the first time?

6 MR. STANNER: Object to the form.

7 THE WITNESS: That's correct.

8 BY MR. HAWAL:

9 Q And periodically visiting individual  
10 pharmacies to try and determine whether they are  
11 legitimate or whether they are involved in  
12 diversion?

13 MR. STANNER: Same objection.

14 THE WITNESS: That's correct.

15 BY MR. HAWAL:

16 Q And what do you mean by, "Do not rely  
17 solely on thresholds or algorithms as a shortcut  
18 to detect suspicious orders"?

19 A I mean that we need to conduct  
20 additional -- or conduct due -- due diligence, I'm  
21 sorry, of our customers, making sure that we  
22 understand what they're doing, whether or not they  
23 give us reason to believe that they're going to  
24 fulfill their regulatory obligations.

1           Q     And that -- that part of it would be  
2     that if a customer, for example, wants to increase  
3     their threshold, that requires some due diligence  
4     on the part of McKesson before the threshold is  
5     increased, correct?

6                     MR. STANNER:   Object to the form.

7                     THE WITNESS:   Generally speaking, yes, I  
8     would agree with that.

9     BY MR. HAWAL:

10           Q     And that should have been occurring how  
11     far back at a company like McKesson?

12                     MR. STANNER:   Object to the form.

13                     THE WITNESS:   Thresholds were not  
14     necessarily something that was an industry  
15     practice until probably 2006, '7 time frame.   So  
16     around that time frame, I guess.

17     BY MR. HAWAL:

18           Q     Well, it could have been an industry  
19     practice earlier than that.   There's nothing  
20     unique about setting thresholds that coincides  
21     with 2006 and 2007.   True?

22                     MR. STANNER:   Object to the form.

23                     THE WITNESS:   It -- it's one methodology  
24     to identify and report suspicious orders.   There

1     may be others.

2                     (Plaintiffs' Exhibit No. 10 was  
3                     marked for identification.)

4     BY MR. HAWAL:

5             Q     Mr. Boggs, I'm going to hand you what's  
6     been marked as Exhibit 10. This is 301,  
7     Operations Manual.

8                     Mr. Boggs, I take it you've seen  
9     McKesson's Operations Manual for the Controlled  
10    Substance Monitoring Program?

11            A     I have.

12            Q     If you look at page 13 of 16, and the  
13    numbering is at the top right-hand corner, this --  
14    is this the -- this is the manual for the  
15    Controlled Substance Monitoring Program that was  
16    enacted as a part of McKesson's obligations with  
17    its 2008 settlement?

18                     MR. STANNER: Object to the form of the  
19    question, foundation.

20                     THE WITNESS: It -- it was the -- the  
21    program for -- that was instituted in 2008 for --

22    BY MR. HAWAL:

23            Q     And if you look at page 13 of 16 under  
24    "Due Diligence" -- do you see where it says

1 "Customer Communications"?

2 A I do.

3 Q The first bullet point under that, it  
4 says: "All communications regarding controlled  
5 substances are subject to subpoena and discovery."

6 Discovery, do you understand discovery  
7 to be discovery by DEA investigations as well as  
8 discovery in legal proceedings as we are  
9 participating in here today?

10 A That would be my understanding, yes.

11 Q And it says in the third bullet point:  
12 "Write information as if it were being viewed by  
13 the DEA." Do you see that?

14 A I do.

15 Q Does that convey to you a reminder to be  
16 careful about how communications are occurring in  
17 written format?

18 MR. STANNER: Object to the form of the  
19 question. Calls for speculation, hearsay,  
20 foundation.

21 THE WITNESS: I don't agree with the  
22 characterization of that. I think that the intent  
23 is to make sure that we're clear and that there's  
24 not a -- a way to misconstrue what's being written

1 so that someone -- a third party that may not know  
2 anything about what transpired would -- would  
3 understand it with -- with some clarity.

4 BY MR. HAWAL:

5 Q Well, let's go to the next highlighted  
6 bullet point. It says: "Refrain from using the  
7 word 'suspicious' in communications. Once  
8 McKesson deems an order and/or customer  
9 suspicious, McKesson is required to act. This  
10 means all controlled substances sales to that  
11 customer must cease, and the DEA must be  
12 notified."

13 As a former DEA representative, does it  
14 trouble you that McKesson is formally instructing  
15 its employees to refrain from using the word  
16 "suspicious" in communications because of the  
17 obligation that follows identifying an order as  
18 suspicious?

19 MR. STANNER: Object to the form of the  
20 question on several bases. I'll avoid a lengthy  
21 objection.

22 BY MR. HAWAL:

23 Q Does that trouble you, sir?

24 A I think with my understanding and

1 experience over the years is that -- and I think I  
2 spoke about it earlier, is there is a -- often  
3 misunderstanding that when we say "suspicious  
4 order," that it's automatically a suspicious  
5 customer.

6 And I think that over the years, I've  
7 had a better appreciation for the fact that there  
8 are many legitimate reasons why orders could be  
9 placed why they are, and oftentimes the label  
10 "suspicion" is misused in the context of how we  
11 normally would think of that term. And I think  
12 that being prudent in terms of when something is  
13 suspicious needs to be more clearly defined and  
14 understood of when we -- when we say "suspicious,"  
15 that it is -- there is something suspicious about  
16 it, and not just label that because that's the  
17 definition in the regulation.

18 Q Well, or is this more consistent with  
19 the public statements that you were making to the  
20 publications that we identified earlier where you  
21 were being critical of certain wholesalers in  
22 terms of keeping their heads buried in the sand  
23 like an ostrich with regard to their failure to  
24 report suspicious orders and continue to ship to

1 customers that were suspicious?

2 MR. STANNER: Object to the form of the  
3 question.

4 THE WITNESS: I don't think those  
5 statements that I made correlate to what you're  
6 referring to here in the document at all.

7 BY MR. HAWAL:

8 Q Well, what do the statements that you  
9 made correlate to then, sir?

10 A It correlates to making sure that you  
11 have an understanding of your customer and you  
12 know your customer, and you're not ignoring maybe  
13 red flags or you're looking at some of the data  
14 that might be indicative of -- of further review.

15 Q Who were you criticizing in those  
16 statements that you made to the USA Today and  
17 Bloomberg News?

18 A I -- that's -- those statements were  
19 made five or six years ago. I -- I don't even  
20 recall that it was --

21 Q So you don't recall --

22 THE REPORTER: I need to get the rest of  
23 the answer. "I don't even recall," and you said  
24 something else.

1                   THE WITNESS: That it was made -- that  
2     those statements were made five or six years ago,  
3     and I don't recall which specific distributor that  
4     I was referring to or if I was just referring in  
5     general -- generalities.

6     BY MR. HAWAL:

7                 Q     Well, the one article dealt specifically  
8     with Cardinal. True?

9                   MR. STANNER: Object. Vague. If you  
10    want to point to an exhibit.

11                  THE WITNESS: That's what the article  
12    was.

13    BY MR. HAWAL:

14                 Q     Well --

15                 A     I don't know that my discussions with  
16    that reporter was more general in the context of  
17    them writing an article that related to Cardinal.

18                 Q     Well, would it be fair to characterize  
19    those statements as being critical of certain  
20    distributors in terms of their failures to monitor  
21    suspicious orders and to do due diligence in terms  
22    or preventing diversion?

23                   MR. PERRY: Objection. Form.

24                  THE WITNESS: I -- I would think that's

1 a fair statement, yes.

2 BY MR. HAWAL:

3 Q Now, after the 2008 settlement  
4 agreement, you became aware when you were with  
5 McKesson that McKesson was -- continued to be  
6 under investigation by the DEA, correct?

7 MR. STANNER: Object to the form.

8 THE WITNESS: After I was employed by  
9 McKesson?

10 BY MR. HAWAL:

11 Q Yes, sir.

12 A I understood that there was still a  
13 settlement being negotiated between McKesson and  
14 the government.

15 Q Well, did you become aware that rather  
16 than improve and adhere to the promises and  
17 obligations that were made by McKesson as a part  
18 of that 2008 settlement, that the DEA and the  
19 Department of Justice determined that McKesson had  
20 a continuing systemic or companywide failure to  
21 take meaningful steps to prevent diversion of  
22 opioids?

23 MR. STANNER: Object to the form of the  
24 question.

1                   THE WITNESS: I don't know that I would  
2 agree with the characterization of "systemic." I  
3 don't recall anything in any of the documents that  
4 there was systemic. There was agreements in the  
5 settlement agreement that McKesson acknowledged  
6 that at various times they had not reported  
7 suspicious orders.

8 BY MR. HAWAL:

9                   Q Well, did you recall that the  
10 investigation that was conducted by the Department  
11 of Justice made a determination that McKesson had  
12 a systemic problem throughout the United States at  
13 multiple distribution centers from 2008 forward?

14                   MR. STANNER: Object to the form of the  
15 question, misstates.

16                   MR. SATIN: And objection -- objection  
17 to the extent you're asking him for his -- his  
18 answer as it relates to his work at the DEA as  
19 opposed to what he learned while he was at  
20 McKesson.

21                   MR. HAWAL: I specifically asked what he  
22 came to know as a result of his working at  
23 McKesson.

24                   THE WITNESS: I --

1 MR. SATIN: That's not in that question,  
2 just to be clear. That's not what the question  
3 was, that one.

4 BY MR. HAWAL:

5 Q Sir, after you joined McKesson, did  
6 you -- were you made aware, either by speaking to  
7 McKesson personnel or reviewing documents at  
8 McKesson, that the Department of Justice made the  
9 claim that there were systemic problems throughout  
10 various distribution centers of McKesson  
11 throughout the country?

12 MR. STANNER: Object to the form.

13 THE WITNESS: I'm aware that the  
14 settlement encompassed several different  
15 distribution centers.

16 (Plaintiffs' Exhibit No. 11 was  
17 marked for identification.)

18 BY MR. HAWAL:

19 Q Sir, I'm handing you what has been  
20 marked as Exhibit 11. It is an August 13th, 2014  
21 letter from U.S. Attorney John Welsh --

22 MR. HAWAL: Yeah, 224.

23 BY MR. HAWAL:

24 Q Have you seen this letter. It's a

1 23-page letter outlining various problems that  
2 were identified as a part of the investigation of  
3 the Aurora, Colorado, distribution center.

4 MR. STANNER: Object to the form of the  
5 question.

6 THE WITNESS: I -- I have seen this  
7 document, yes.

8 BY MR. HAWAL:

9 Q When did you last see it?

10 A I looked at it briefly in some of the  
11 preparation for this deposition. I didn't read it  
12 cover to cover, but I -- I've seen it a couple  
13 different times.

14 Q And you saw it -- did you also see it as  
15 a part of your employment at McKesson or during  
16 the time you were employed at McKesson?

17 A I did.

18 Q Who was in charge of the distribution  
19 center at Aurora from a Regulatory Affairs  
20 standpoint during 2009, 2010 through 2013?

21 MR. STANNER: Objection. Speculation.

22 THE WITNESS: I believe it was Tom  
23 McDonald.

24 BY MR. HAWAL:

1           Q     And Tom McDonald is still employed with  
2     McKesson?

3           A     He is.

4           Q     Would you agree that this letter sets  
5     forth alarming investigative findings that would  
6     reflect a deliberate indifference to the legal  
7     obligations under the Controlled Substances Act?

8                     MR. STANNER:   Object to the form of the  
9     question, argumentative.

10                    THE WITNESS:   I think it sets forth some  
11     areas of concern that would warrant further  
12     review, yes.

13     BY MR. HAWAL:

14           Q     Do you believe that it would set forth  
15     or -- or evidence a deliberate indifference to the  
16     many harms that were being caused by the opioid  
17     epidemic?

18                    MR. STANNER:   Object to the form, legal  
19     conclusion.

20                    THE WITNESS:   I don't agree with the  
21     characterization of "indifference."   In my time at  
22     McKesson, I've not seen any evidence of  
23     indifference.

24     BY MR. HAWAL:

1           Q     Well, you weren't with McKesson when  
2     this investigation was largely being conducted.  
3     True?

4           A     You asked me if I thought that this  
5     represented indifference, and I'm --

6           Q     Yes.

7           A     -- saying that my time, my five years at  
8     McKesson and talking to hundreds of people in  
9     McKesson, I have not seen any evidence of  
10    indifference to its regulatory obligations.

11          Q     Well, this --

12          A     And I don't know that it would have just  
13    all of a sudden happened prior to that, but I  
14    didn't -- I have not seen any evidence of  
15    indifference.

16               MR. HAWAL: I'm going to move to strike  
17    the answer as nonresponsive.

18    BY MR. HAWAL:

19          Q     My question, sir, is you were not with  
20    McKesson when this investigation was being  
21    conducted in Aurora, Colorado. True?

22               MR. STANNER: Object to the form of the  
23    question.

24               THE WITNESS: That's correct.

1 BY MR. HAWAL:

2 Q Would you have expected Tom McDonald, as  
3 the Regulatory Affairs person in charge of the  
4 Aurora, Colorado distribution center, to have been  
5 made aware of these findings that are referenced  
6 in this exhibit?

7 MR. STANNER: Object to the --

8 BY MR. HAWAL:

9 Q In this letter?

10 MR. STANNER: Object to the form of the  
11 question.

12 THE WITNESS: I would have expected  
13 that, yes.

14 BY MR. HAWAL:

15 Q Are you aware that Mr. McDonald  
16 testified in deposition not long ago that he had  
17 never seen this letter and was not made aware of  
18 the findings that are recited in this letter?

19 MR. STANNER: Same objection.

20 THE WITNESS: I've not seen his  
21 transcript. I have no idea what he testified to.

22 BY MR. HAWAL:

23 Q Do you find that surprising?

24 MR. STANNER: Object to the form.

1 THE WITNESS: I -- yes.

2 BY MR. HAWAL:

3 Q Would you expect that a diligent company  
4 would want to investigate whether or not these  
5 allegations were true or not?

6 MR. STANNER: Object to the form.

7 THE WITNESS: It's my understanding that  
8 we have, and we have taken significant steps to  
9 address these issues.

10 MR. HAWAL: I'm not -- move to strike as  
11 nonresponsive.

12 BY MR. HAWAL:

13 Q My question, sir, is would you expect a  
14 company like McKesson to have investigated whether  
15 these findings in this 23-page letter were true  
16 and accurate?

17 MR. STANNER: Object to the form of the  
18 question.

19 THE WITNESS: We have reviewed our  
20 program and taken steps to address the issues that  
21 are in here. I think I'm being responsive to your  
22 question.

23 BY MR. HAWAL:

24 Q When did you take steps to respond to

1     this letter? Or these shortcomings?

2             A     Ever since I've --

3                   MR. STANNER: I'm sorry. Object to the  
4     form.

5                   THE WITNESS: Ever since I've been at  
6     McKesson.

7     BY MR. HAWAL:

8             Q     Let's go to page 11 of this document.  
9     Under paragraph B, it says: "Aurora's Desire For  
10    Increased Sales Overrode Its Obligations to Report  
11    Suspicious Orders. Our investigation has revealed  
12    a disturbing pattern. McKesson-Aurora's desire  
13    for increased sales and retaining its customers  
14    overrode its obligations to report suspicious  
15    orders. We have identified this trend across  
16    several different areas."

17                   As a former DEA agent and current  
18    McKesson employee, do you find that allegation to  
19    be particularly troubling?

20                   MR. STANNER: Object to the form of the  
21    question.

22                   THE WITNESS: An allegation of that,  
23    if -- yes. An allegation like that would be  
24    concerning, yes.

1 BY MR. HAWAL:

2 Q In fact, McKesson agreed to pay a  
3 \$150 million fine as a result of a settlement of  
4 many of the allegations contained in this 23-page  
5 letter. True?

6 MR. STANNER: Object to the form of the  
7 question.

8 THE WITNESS: I don't think that's  
9 accurate at all.

10 BY MR. HAWAL:

11 Q Well, do you --

12 A The civil penalties relates to  
13 non-reporting of suspicious orders. There's no  
14 other penalty -- civil penalty provision other  
15 than that, and that's what -- the only way that  
16 the dollars can be calculated --

17 Q Well, you --

18 A -- is related to failure to report a  
19 suspicious order.

20 Q Were you involved in negotiating the  
21 settlement between McKesson and the Department of  
22 Justice?

23 A I was not.

24 Q And did McKesson accept responsibility

1 as part of that \$150 million settlement?

2 MR. STANNER: Objection. Form of the  
3 question.

4 THE WITNESS: As I recall, there's --  
5 there's some context to that in the settlement  
6 agreement, yes.

7 BY MR. HAWAL:

8 Q Let me ask you -- it says that:  
9 "McKesson Aurora set its initial thresholds for  
10 its pharmacy customers very high. McKesson  
11 Aurora's review process was not even triggered  
12 until an individual pharmacy sold more than  
13 10 percent of that pharmacy's average volume  
14 for -- from a 12-month period, from 2007 to 2008,  
15 a year in which McKesson had settled claims  
16 because diversion was flourishing in McKesson-  
17 supplied pharmacies."

18 Did you make any determination that that  
19 was not a true statement?

20 MR. STANNER: Object to the form of the  
21 question.

22 THE WITNESS: I did not retrospectively  
23 go look at thresholds that were back during this  
24 time frame.

1 BY MR. HAWAL:

2 Q Did anyone at McKesson?

3 MR. STANNER: Objection. Calls for  
4 speculation.

5 BY MR. HAWAL:

6 Q To your knowledge?

7 A We were looking at setting thresholds  
8 for -- in today, since I've been with McKesson.

9 Q No, that's not my question, sir. My  
10 question is, did anyone to your knowledge go back  
11 and make a determination whether or not this  
12 statement is true?

13 MR. STANNER: Same objection.

14 THE WITNESS: Not to my knowledge, no.

15 BY MR. HAWAL:

16 Q And then below that in the -- not the  
17 next paragraph, but it says: "In some cases,  
18 McKesson Aurora set some thresholds so high at the  
19 outset that the pharmacy customer would never  
20 exceed it, and thus, never -- and thus, never  
21 trigger any review as to whether an order was  
22 indeed suspicious."

23 Do you know whether or not that is a  
24 true statement?

1           A       I don't know if it is or not.

2           Q       Did anyone to your knowledge go back and  
3   investigate whether or not thresholds were  
4   artificially set so high so that a customer would  
5   never bump up against a threshold and a suspicious  
6   order report would not have to be made?

7                   MR. STANNER:  Objection to the form of  
8   the question.

9                   THE WITNESS:  What we did was hire an  
10   outside third party to look at what our orders  
11   were being done since I've been with McKesson  
12   going forward, and whether or not we need to --  
13   how they need to be appropriately set.

14   BY MR. HAWAL:

15           Q       But no one went back -- backwards to  
16   assess whether or not these allegations were true  
17   and accurate?

18                   MR. STANNER:  Objection.  Speculation.

19   BY MR. HAWAL:

20           Q       To your knowledge.

21           A       I don't know whether or not that review  
22   went back and looked at that specific data or not.

23           Q       And the company that you hired to do  
24   that setting of the thresholds again is -- is who?

1 A Currently it was the Analysis Group.

2 Q And was there anyone before the Analysis  
3 Group that was doing that at McKesson?

4 A We had --

5 MR. STANNER: Objection to the form of  
6 the question.

7 THE WITNESS: -- analysis or analytic  
8 folks in McKesson that were setting the thresholds  
9 previously.

10 BY MR. HAWAL:

11 Q And when were those people brought on  
12 board at McKesson to set thresholds?

13 MR. STANNER: Objection. Calls for  
14 speculation.

15 THE WITNESS: I don't know if they were  
16 brought on board specifically to set thresholds.  
17 That was part of their responsibility. When they  
18 were hired, I don't recall.

19 BY MR. HAWAL:

20 Q On the next page, page 12, it says at  
21 the -- in the first paragraph: "McKesson Aurora  
22 routinely manipulated the thresholds. It would  
23 often preemptively increase the thresholds of its  
24 customers on particular drugs before the customer

1 had even submitted a TCR (threshold change  
2 request) seeking a threshold increase. These  
3 preemptive threshold increases were often in  
4 response to either the threshold warning reports  
5 or omit reports, the very reports that McKesson  
6 was supposed to rely upon to investigate customer  
7 activity."

8 Do you have any basis to disagree that  
9 that was occurring in Aurora?

10 MR. STANNER: Object to the form of the  
11 question.

12 THE WITNESS: I don't have any basis to  
13 respond to it either way.

14 BY MR. HAWAL:

15 Q If that is true, then it would be a very  
16 troubling issue as it relates to McKesson's legal  
17 obligation to avoid or prevent diversion. True?

18 MR. STANNER: Object to the form of the  
19 question.

20 THE WITNESS: I -- you'd have to look at  
21 what the facts and circumstances were that caused  
22 them to decide whether or not to adjust the  
23 thresholds and whether or not there was a  
24 legitimate reason to do that. I -- I don't know.

1 BY MR. HAWAL:

2 Q Well, this says that they were doing it  
3 preemptively without doing any kind of  
4 investigation. Would that be troubling, sir, to  
5 you as a former DEA agent?

6 MR. STANNER: Object to the form.

7 THE WITNESS: It depends on what the  
8 facts are. If the facts are that a customer  
9 needed an adjustment because there was a glitch in  
10 the IT system to -- to reput them back at a  
11 certain situation or whatever as a preemptive  
12 move, I don't know. I don't know what the facts  
13 and circumstances are that -- for causing these  
14 people to do what they were supposedly doing. I  
15 don't know.

16 BY MR. HAWAL:

17 Q Well, would it be -- you think it would  
18 be wise for someone to do an investigation to  
19 determine whether or not these allegations were  
20 true in order to effectuate a change?

21 MR. STANNER: Object to the form of the  
22 question.

23 THE WITNESS: Since I've been at  
24 McKesson, we looked at -- at what we were doing in

1 the past and how -- how we can improve to make a  
2 more stringent process, and so we -- I have looked  
3 at --

4 BY MR. HAWAL:

5 Q So the answer to my question is, yes --

6 THE REPORTER: I have looked at? I have  
7 looked at?

8 MR. STANNER: Let him finish the  
9 question -- answer.

10 Did you finish your answer?

11 THE WITNESS: I did.

12 MR. STANNER: Okay.

13 BY MR. HAWAL:

14 Q So the answer to my question is, yes, it  
15 would be prudent for someone to investigate these  
16 allegations to make sure that these kinds of  
17 identified problems did not continue?

18 MR. STANNER: Same objection.

19 THE WITNESS: Well, there's an  
20 assumption that there's a problem here without  
21 knowing the facts and circumstances. What we've  
22 looked at was improving our process to adjust  
23 thresholds and strengthen that process, and that's  
24 what -- exactly what we've done.

1 BY MR. HAWAL:

2 Q Was anyone reprimanded or fired or in  
3 any way negatively impacted as a result of what  
4 had been going on that resulted in McKesson paying  
5 a \$150 million fine for its failure to effectively  
6 follow the Controlled Substances Act?

7 MR. STANNER: Objection. Calls for  
8 speculation.

9 THE WITNESS: It's my understanding that  
10 the CEO, Mr. Hammergren, testified that someone  
11 had been displaced from McKesson. I -- I'm not  
12 privy to that information.

13 BY MR. HAWAL:

14 Q So you don't know who was in any way  
15 fired or otherwise disciplined for the violations  
16 that gave rise to the \$150 million penalty?

17 A I don't --

18 MR. STANNER: Objection to the form.

19 THE WITNESS: I'm sorry. I don't know  
20 who that individual is or what other actions were  
21 taken by senior management in the company. I --  
22 I'm not privy to that.

23 BY MR. HAWAL:

24 Q Do you agree that -- do you agree that

1 in order to increase a threshold, some type of due  
2 diligence would be required?

3 MR. STANNER: Objection to the form.

4 THE WITNESS: There may be circumstances  
5 that don't require that. Our process, if a  
6 customer initiates a request, we do conduct due  
7 diligence. In fact, we conduct pretty extensive  
8 due diligence.

9 BY MR. HAWAL:

10 Q And do you recall that, according to  
11 this 23-page detailed investigation report, that  
12 almost no suspicious order reports were submitted  
13 to the DEA from 2008 until 2013, until McKesson  
14 was served with a warrant and a subpoena as part  
15 of the investigation?

16 MR. STANNER: Object to the form of the  
17 question.

18 THE WITNESS: I don't believe that this  
19 is an investigative report. This is a letter  
20 outlining some -- some information by the  
21 Assistant U.S. Attorney. Other than that, I  
22 understand what you're saying, and I agree.

23 BY MR. HAWAL:

24 Q On page 18 of this letter, it

1 identifies: "Small rural communities in Colorado  
2 who were receiving large quantities of opioids  
3 which were significantly disproportionate to the  
4 adult population in those communities." True?

5 MR. STANNER: Object to the form.

6 THE WITNESS: I see that, yes.

7 BY MR. HAWAL:

8 Q That has been occurring in parts of the  
9 country besides Colorado. True?

10 MR. STANNER: Same objection.

11 THE WITNESS: I believe that's correct,  
12 yes.

13 BY MR. HAWAL:

14 Q What -- what states come to mind that  
15 also were receiving large quantities of opioids  
16 from McKesson that was significantly  
17 disproportionate to the population?

18 MR. STANNER: Object to the form.

19 THE WITNESS: West Virginia comes to  
20 mind in terms of some pharmacies that are in more  
21 rural parts of the country with small populations.

22 BY MR. HAWAL:

23 Q Is that -- is that all, West Virginia  
24 and Colorado?

1           A     I haven't conducted a comprehensive  
2     study to answer that question, but I -- I don't  
3     know.   I --

4           Q     That's -- that's one of the red flags  
5     that has long been identified as a potential  
6     indicator of diversion?

7           A     It is a red flag, yes.

8           Q     Despite this \$150 million penalty or  
9     settlement that McKesson agreed to pay for  
10    violations of the laws and regulations relating to  
11    diversion of controlled substances, you're aware  
12    that many employees of the DEA were -- who were  
13    involved in these investigations were profoundly  
14    disappointed that the fine was not much higher and  
15    that some McKesson executives were not charged  
16    criminally?

17                   MR. STANNER:   Object to the form of the  
18    question.

19                   THE WITNESS:   I'm not aware of that, no.  
20    BY MR. HAWAL:

21           Q     You've not -- have you ever watched any  
22    of the "60 Minutes" segments on the opioid crisis  
23    that contain interviews with your former  
24    colleagues at DEA?

1           A       I have seen one -- one of the "60  
2   Minutes" segments, yes.

3           Q       And do you recall that some of those  
4   "60 Minutes" segments had interviews with your  
5   former colleagues where they expressed significant  
6   disappointment that McKesson received such a small  
7   fine and that no one was held personally  
8   responsible?

9                   MR. STANNER:   Object to the form of the  
10   question.

11                  THE WITNESS:   I don't agree with the  
12   characterization that it was a small fine.  It's  
13   the largest fine that the DEA has ever gotten,  
14   and -- to whether or not they were disappointed or  
15   not, I know that they -- that was what they said  
16   in that interview.

17   BY MR. HAWAL:

18           Q       Based upon McKesson's settlement of the  
19   150 million -- the \$150 million settlement as a  
20   result of the Department of Justice's  
21   investigation and findings, was it rather clear to  
22   you that McKesson was in fact contributing to the  
23   opioid epidemic?

24                   MR. STANNER:   Objection to the form of

1 the question.

2 THE WITNESS: I don't know that you  
3 could make that quantum leap just because of -- of  
4 some failures that that contributed to the opioid  
5 epidemic.

6 BY MR. HAWAL:

7 Q Do you know --

8 A Not reporting a suspicious order in and  
9 of itself is a regulatory violation of an  
10 administrative act of not making that report.

11 Q So is it your position that McKesson has  
12 not contributed to the opioid epidemic?

13 A Well, I think -- first of all, I  
14 believe, and I know McKesson believes, that the  
15 opioid epidemic is a significant problem in this  
16 country, and it's a problem that's evolved over  
17 several years or several decades. It's a -- the  
18 deaths associated with it are horrific. The  
19 employees in McKesson are not immune from it. The  
20 family members at McKesson are not immune from it,  
21 and that's why we take our regulatory obligations  
22 seriously.

23 We do significant security procedures at  
24 each and every one of our facilities to make sure

1     that we maintain effective controls. Because we  
2     have large volumes of controlled substances in  
3     those facilities, we have alarm systems, cameras,  
4     cages, concrete vaults. We make sure that they're  
5     secure while they are in our possession.

6                     When we pass them on downstream to our  
7     customers, we make sure that we conduct a due  
8     diligence as best that we can to know our  
9     customers. Does that mean we contributed to the  
10    opioid epidemic? I don't agree with that.

11            Q     Other distributors were also fined by  
12    the DEA for failure to conform to the Controlled  
13    Substances Act and -- and regulations. True?  
14    Besides McKesson.

15            A     There were other distributors that were  
16    fined by the DEA, yes.

17            Q     And do you know what led to other  
18    distributors' fines?

19            A     Define --

20                     MR. STANNER: Objection to the form.

21                     MR. SATIN: Objection --

22                     THE WITNESS: Define --

23                     MR. SATIN: Sorry. Objection to the  
24    extent you're asking -- or your answer would

1     reveal information about your work at the DEA.

2                   THE WITNESS:   From any -- the public  
3     information that I've read, it was related to a  
4     failure to report a suspicious order.  That's the  
5     only reason a civil fine can be levied on a  
6     registrant.

7     BY MR. HAWAL:

8           Q     How many suspicious orders did McKesson  
9     fail to report from 2008 through 2013?

10                  MR. STANNER:   Objection to the form,  
11     speculation.

12                  THE WITNESS:   I -- I have no idea.  I  
13     don't know.

14     BY MR. HAWAL:

15           Q     You don't know if it was ten or 10,000?

16                  MR. STANNER:   Same objection.

17                  THE WITNESS:   I don't know.

18     BY MR. HAWAL:

19           Q     Well, would that be important  
20     information for you to know in order to be able to  
21     det- -- even answer the question as to whether or  
22     not McKesson contributed or not to the opioid  
23     epidemic?

24           A     Not at all.  You're -- you're making an

1     assumption -- again, we talked about this earlier,  
2     you're assuming a suspicious order is a suspicious  
3     customer. You're assuming that a suspicious order  
4     if it's shipped, and most of the time McKesson  
5     blocks those shipments, that it's diverted. And  
6     diversion can occur completely outside of the  
7     closed system of distribution.

8                     If you look at the National Survey on  
9     Drug Use and Health, you have more than 50 percent  
10    of the people who misuse opioids get them once  
11    they've completely left the closed system of  
12    distribution.

13                    Sir, you're making an assumption that a  
14    suspicious order equals a suspicious customer, and  
15    that's often a fallacy. It's a mistake that  
16    people make.

17                    Q     Sir, do you know how many suspicious  
18    orders were not blocked but were shipped?

19                    MR. STANNER: Objection to the form.

20    BY MR. HAWAL:

21                    Q     By McKesson?

22                    A     During what time frame?

23                    Q     From 2008 to 2013.

24                    MR. STANNER: Same objection.

1 THE WITNESS: It was prior to my  
2 employment. I -- I don't know.

3 BY MR. HAWAL:

4 Q So you don't -- so you don't have an  
5 answer to that question either, right?

6 A I do not.

7 Q Well, would you be concerned about a  
8 suspicious order being shipped and not blocked,  
9 and no due diligence being done to determine  
10 whether or not that suspicious order should be  
11 shipped?

12 MR. STANNER: Objection to the form.

13 THE WITNESS: Not necessarily.

14 BY MR. HAWAL:

15 Q Okay. Did you have a different  
16 viewpoint when you were with the DEA?

17 MR. STANNER: Objection --

18 MR. SATIN: Objection.

19 MR. STANNER: -- to the form.

20 MR. SATIN: Same instruction. Don't  
21 answer that.

22 THE WITNESS: I don't know that I can  
23 answer at this time.

24 BY MR. HAWAL:

1 Q Do you know who Gary Hilliard is?

2 A I do.

3 Q What is he -- what's his position with  
4 McKesson?

5 A I don't believe he's currently employed  
6 by McKesson.

7 Q What was his position with McKesson?

8 A I believe his title was director of  
9 Regulatory Affairs.

10 Q For what region?

11 A I don't know that he had a specific  
12 region. I think he had some different  
13 responsibilities.

14 Q And just so that we're clear on the  
15 record, what is the -- what is the job description  
16 of someone who's a Regulatory Affairs -- director  
17 of Regulatory Affairs?

18 MR. STANNER: Objection to form. Vague,  
19 time frame.

20 THE WITNESS: They have different  
21 responsibilities depending upon where they are.  
22 The directors of response -- or directors of  
23 Regulatory Affairs that report to me have the  
24 responsibility of overseeing a particular region.

1 Many of them, though not all of them, have a  
2 Regulatory Affairs manager that reports to them to  
3 assist them in overseeing the customers in a  
4 particular region, conducting due diligence on  
5 those customers, conducting due diligence in  
6 customers that are prospective customers of  
7 McKesson to determine whether or not we even want  
8 to ship to them in the first place, and ongoing  
9 due diligence to those customers while they're  
10 McKesson customers.

11 BY MR. HAWAL:

12 Q Regulatory Affairs is supposed to  
13 monitor the company and customers to make sure  
14 that diversion is not occurring?

15 MR. STANNER: Objection to the form of  
16 the question.

17 THE WITNESS: Their -- their  
18 responsibility is to conduct due diligence of  
19 customers in an ongoing fashion to ensure that  
20 when we pass those controlled substances that,  
21 first and foremost, that they're licensed by the  
22 state and registered by the DEA before we can even  
23 supply them. That from time to time changes. The  
24 status of that changes, and we need to try to

1 monitor for that.

2           Their responsibility is for conducting  
3 due diligence of those specific customers to  
4 determine whether or not they were going -- those  
5 customers are going to exercise their  
6 corresponding responsibility under the regulations  
7 and -- and handle those in a prudent manner.

8           (Plaintiffs' Exhibit No. 12 was  
9 marked for identification.)

10 BY MR. HAWAL:

11           Q     I'm going to hand you what has been  
12 marked as Plaintiffs' Exhibit 12, which is a  
13 series of e-mails, and the page that I'm going to  
14 refer you to is MCKMDL00543972, which is an e-mail  
15 exchange between Sharon Mackarness and Gary  
16 Hilliard in 2006.

17           MR. STANNER: I'm sorry, I -- the Bates  
18 number that we have here starts at --

19           MR. HAWAL: Yeah, it's the second --  
20 it's the backside of that.

21           MR. STANNER: Right. I have 543916. I  
22 believe you said 543972.

23           MR. HAWAL: Well, I have one that's  
24 Bates-stamped 972, and I have the same document

1 Bates-stamped 00543915.

2 MR. STANNER: I --

3 MR. SATIN: We have the 915.

4 MR. STANNER: We have 915.

5 MR. HAWAL: Okay. Well, let's just --

6 let's go with that one. I mean it's the same

7 document, but --

8 BY MR. HAWAL:

9 Q Do you see the -- the e-mail that says  
10 from Sharon Mackarness to Gary Hilliard dated  
11 October 26, 2006?

12 A I do.

13 Q The second paragraph says: "JD brought  
14 up a valid point in the meeting. We are in the  
15 business to sell product. If we could produce a  
16 report (you may already have one) that warned a  
17 customer -- customer's approach to the threshold,  
18 say at 85 percent of their 10,000 dosages, work  
19 could begin on justifying an increase in threshold  
20 prior to any lost sales."

21 Are you aware that at around this time  
22 McKesson began to notify customers that they were  
23 approaching their threshold so that a threshold  
24 increase could be made, and therefore avoid the

1 customer to come up against its threshold or  
2 limit, and therefore would require a suspicious  
3 order report?

4 MR. STANNER: Object --

5 MR. SATIN: Objection.

6 MR. STANNER: Objection. Calls for  
7 speculation.

8 MR. SATIN: Objection pursuant to Touhy.  
9 Don't answer that if it would require you to  
10 disclose information when you worked at the DEA.

11 BY MR. HAWAL:

12 Q I'm asking you, as a result of your work  
13 at McKesson, are you aware that at around this  
14 time that process was implemented of notifying  
15 customers of a threshold warning report?

16 MR. STANNER: Same objection.

17 THE WITNESS: I understand the question.  
18 What I disagree with -- and I understand it at  
19 that time. What I disagree with is the context of  
20 avoiding suspicious orders. I don't think -- from  
21 what I understand, the sole purpose was not to  
22 avoid reporting or identifying a suspicious order.

23 BY MR. HAWAL:

24 Q And how do you know that?

1           A       From reading different documents --

2           Q       Well --

3           A       -- and seeing things in there that --  
4       that the purpose of doing that was not to avoid a  
5       suspicious order.

6           Q       Well, was it -- was it to avoid losing  
7       sales?

8                   MR. STANNER:   Same objection.

9                   THE WITNESS:   I -- at the time --  
10       what -- what was occurring at the time or on  
11       specific instances, you'd have to ask the  
12       individual what their intent was.  I don't know at  
13       this point.

14       BY MR. HAWAL:

15           Q       And -- and Gary Hilliard made the  
16       determination that he thought it was a good  
17       idea -- the e-mail response above that, he thought  
18       that warning customers that they are approaching  
19       their threshold was a good idea.  Right?

20                   MR. STANNER:   Objection.  Calls for  
21       speculation.

22                   THE WITNESS:   That's what it says.  I  
23       mean --

24       BY MR. HAWAL:

1 Q Do you -- have you spoken to Gary  
2 Hilliard about this?

3 A This is the first time I've ever seen  
4 it. I've never seen this before.

5 Q Well, you're aware that the -- the  
6 process of threshold warning reports did become a  
7 company policy at McKesson as a result of your  
8 position at McKesson currently, right?

9 MR. STANNER: Object to the form of the  
10 question.

11 THE WITNESS: I'm sorry, could you  
12 repeat that?

13 BY MR. HAWAL:

14 Q Yeah. You --

15 A I'm not sure I agree with it.

16 Q You've become aware that at around this  
17 time McKesson began -- implemented a policy of  
18 sending out threshold warning reports to  
19 customers, true?

20 A During that --

21 MR. STANNER: Same objection.

22 THE WITNESS: During that time frame,  
23 yes.

24 BY MR. HAWAL:

1 Q Yeah. Has that stopped?

2 A Yes, it has.

3 Q Why?

4 A We have taken a more conservative  
5 approach of trying to manage our thresholds and

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED] So we don't, as a matter of policy,  
17 discuss the thresholds with our customers.

18 Q In fact, you don't want your customers  
19 to know what their thresholds are, right?

20 A We don't know --

21 MR. STANNER: Objection to the form of  
22 the question, vague.

23 THE WITNESS: We don't know that it's a  
24 relevant piece of information for the customer to

1 have.

2 BY MR. HAWAL:

3 Q So you do not provide customers with  
4 their threshold amount, right?

5 A We do not.

6 Q But a threshold warning report would  
7 allow a customer to determine what their threshold  
8 was, right?

9 A I don't know that -- as I understood  
10 those warning reports is that it was just a --  
11 letting the customer know they were approaching  
12 the threshold. I don't know that it specifically  
13 said what the actual amount was or how close they  
14 were or anything else. I don't know that.

15 Q Do you believe that it would -- was an  
16 advisable position for the company to implement a  
17 policy whereby the company would -- or company  
18 employees would proactively contact a customer and  
19 ask them if they needed to increase their  
20 threshold prior to reaching it?

21 MR. STANNER: Objection to the form of  
22 the question.

23 THE WITNESS: McKesson services  
24 thousands and thousands of customers, and I would

1 say from my time at McKesson and reviewing  
2 thousands of customers, that the vast majority of  
3 them are legitimate pharmacies or hospitals doing  
4 what they need to do, and attempting to try to  
5 help meet their legitimate needs would be a reason  
6 to do that. We don't do that today as a matter of  
7 practice.

8 MR. HAWAL: I'm going to move to strike,  
9 other than the last sentence, as nonresponsive.

10 BY MR. HAWAL:

11 Q You're aware that McKesson would  
12 proactively contact customers between 2008 and  
13 2012 with a warning report -- threshold warning  
14 report with an invitation or -- or a question as  
15 to whether they wanted their threshold increased  
16 prior to them bumping up against their threshold.  
17 Are you aware that that was done --

18 MR. STANNER: Object to the form of the  
19 question.

20 BY MR. HAWAL:

21 Q -- as policy?

22 MR. SATIN: Objection pursuant to Touhy.  
23 Don't answer if it would reveal information about  
24 your time at the DEA.

1 THE WITNESS: I -- I'm aware that that  
2 was happening --

3 BY MR. HAWAL:

4 Q When was it --

5 A -- had happened before.

6 Q When was that practice terminated?

7 MR. STANNER: Object to the form. Calls  
8 for speculation based on hearsay.

9 BY MR. HAWAL:

10 Q Approximately.

11 A It was my understanding it stopped  
12 before I came to McKesson. Exactly when, I don't  
13 know.

14 Q Do you believe that that policy had the  
15 potential for abuse in terms of sales  
16 representatives placing revenue above concerns  
17 about diversion?

18 MR. STANNER: Object to the form.

19 THE WITNESS: The -- as I stated before,  
20 it's my understanding that the purpose of some of  
21 that was to help ensure that the customers had  
22 sufficient quantities of medication to treat the  
23 legitimate needs of patients.

24 BY MR. HAWAL:

1 Q That's not my question, sir.

2 My question was, do you believe that  
3 that policy had the potential for abuse in terms  
4 of sales representatives placing profit and  
5 revenue above concerns about potential diversion?

6 MR. STANNER: Object to the form.

7 BY MR. HAWAL:

8 Q Either you do or you don't.

9 A That -- that can be a concern, yes.

10 MR. HAWAL: Let's take -- let's take a  
11 lunch break.

12 THE VIDEOGRAPHER: The time is 1:14 p.m.  
13 We're going off the record.

14 MR. STANNER: Can we stay on the record  
15 and put two quick things on the record?

16 MR. SATIN: Very quickly. When at times  
17 I've said, "Same objection," as I think everyone  
18 here knows, I'm not referring to the same  
19 objection that another lawyer in this room makes,  
20 but the same objection I previously made as it  
21 relates to Touhy.

22 MR. STANNER: I --

23 MR. HAWAL: Understood.

24 MR. STANNER: I'd just like to put on

1 the record what I mentioned before we got started  
2 today at the beginning of the day.

3 So obviously since then a number of  
4 questions have come up that have implicated this  
5 DEA stuff. It is our view that Mr. Boggs is  
6 subject to seven hours of a deposition. So to the  
7 extent that you want reserve some time pending a  
8 Touhy ruling, I would ask you to be mindful of  
9 that throughout the day. But we would not consent  
10 to seven hours today and any additional time based  
11 on DEA. So please be mindful of that.

12 MR. HAWAL: Will do. Thank you.

13 THE VIDEOGRAPHER: The time is 1:14 p.m.  
14 We're going off the record.

15 (Lunch recess.)

16 THE VIDEOGRAPHER: The time is 2:05  
17 p.m., and we're back on the record.

18 (Plaintiffs' Exhibit No. 14 was  
19 marked for identification.)

20 BY MR. HAWAL:

21 Q Mr. Boggs, I'm going to hand you what  
22 has been marked as Plaintiffs' Exhibit 14.

23 Did you make a presentation to the West  
24 Virginia Attorney General on September 1st, 2015,

1 on behalf of McKesson?

2 A I did.

3 Q And who else accompanied you from  
4 McKesson, if anyone?

5 A From McKesson, I don't believe there was  
6 anybody else.

7 Q And who initiated the presentation? In  
8 other words, how did it come about? Was it at --  
9 at your suggestion or at McKesson's suggestion or  
10 the West Virginia Attorney General's suggestion?

11 A I --

12 MR. STANNER: Objection. Calls for  
13 speculation.

14 THE WITNESS: I believe it was at the  
15 request of McKesson through their counsel to the  
16 Attorney General's Office.

17 BY MR. HAWAL:

18 Q And what did you understand the purpose  
19 of this presentation to be?

20 A Was to provide the Attorney General and  
21 his staff who might be in attendance what McKesson  
22 was doing on our Controlled Substance Monitoring  
23 Program and the efforts that were taken to conduct  
24 due diligence on our customers.

1           Q       Was it, in essence, an effort by  
2       McKesson to tout the due diligence program that it  
3       had in place to address the opioid crisis in West  
4       Virginia?

5                   MR. STANNER:   Objection.   Calls for  
6       speculation.

7                   THE WITNESS:   I think it was an effort  
8       to inform the Attorney General on the efforts that  
9       McKesson was taking in that particular state as  
10      well as other states.

11      BY MR. HAWAL:

12           Q       Well, did you understand at the time  
13      that you were making this presentation that there  
14      was a crisis in West Virginia that hit that state  
15      particularly hard with regard to deaths from  
16      opioids and incalculable costs to communities  
17      there?

18                   MR. STANNER:   Object to the form.

19                   THE WITNESS:   I'm aware that the state  
20      of West Virginia has had a problem with opioid  
21      abuse or prescription drug abuse.

22      BY MR. HAWAL:

23           Q       And the crisis in West Virginia is where  
24      McKesson for years had shipped opioid pills in

1 enormous quantities to small towns with  
2 populations --

3 MR. LIVINGSTON: I'm sorry. We can  
4 barely hear you on the phone.

5 (A discussion was held off the record.)

6 THE VIDEOGRAPHER: The time is 2:08 p.m.  
7 We're going off the record.

8 (Pause.)

9 THE VIDEOGRAPHER: The time is 2:10  
10 p.m., and we're back on the record.

11 BY MR. HAWAL:

12 Q Mr. Boggs, are you aware from the time  
13 that you've been at McKesson that over the years  
14 McKesson had shipped opioid pills to communities  
15 that had small populations of hundreds or a few  
16 thousand with enormous quantities of opioids that  
17 were disproportionate to the populations of the  
18 pharmacies servicing the community?

19 MR. STANNER: Object to the form of the  
20 question.

21 THE WITNESS: I am.

22 BY MR. HAWAL:

23 Q And did you meet with the West Virginia  
24 Attorney General to convince him that McKesson had

1 not significantly contributed to the opioid  
2 crisis?

3 MR. STANNER: Object to the form of the  
4 question, "convince."

5 THE WITNESS: I don't recall that ever  
6 being discussed during that meeting at all.

7 BY MR. HAWAL:

8 Q Because you would agree that McKesson  
9 had contributed to the West Virginia opioid  
10 crisis, true?

11 MR. STANNER: Object to the form of the  
12 question on several bases.

13 THE WITNESS: I would not.

14 BY MR. HAWAL:

15 Q You would not.

16 Did you meet with him to apologize for  
17 what McKesson had done to his state?

18 MR. STANNER: Objection.

19 THE WITNESS: I don't recall that ever  
20 being discussed during the meeting.

21 BY MR. HAWAL:

22 Q You're aware that the Attorney General  
23 of West Virginia has filed a lawsuit against  
24 McKesson and others related to the opioid epidemic

1 in that state?

2 MR. STANNER: Object to the form of the  
3 question.

4 THE WITNESS: I am.

5 BY MR. HAWAL:

6 Q Was the lawsuit filed when you met with  
7 him on September 1st, 2015, or was it filed  
8 sometime thereafter?

9 A I believe it was filed after that.

10 Q By this time in September 1st of 2015,  
11 the opioid epidemic had been well established not  
12 only in West Virginia but across the country.  
13 True?

14 MR. STANNER: Object to the form.

15 THE WITNESS: It had.

16 BY MR. HAWAL:

17 Q And I'm going to refer you to slide 8 of  
18 this PowerPoint presentation that you made to the  
19 Attorney General of the State of West Virginia. I  
20 should mention that the Bates number for this  
21 slide is MCKMDL00695070.

22 This was a slide that you prepared?

23 A It is.

24 Q And does this provide information as to

1     what steps McKesson had in place in an effort to  
2     prevent opioid diversion?

3             A     It does.

4             Q     Are these steps that you implemented as  
5     a part of your efforts to improve McKesson's  
6     diversion control of opioid pills?

7                     MR. STANNER: Object to the form,  
8     compound.

9                     THE WITNESS: Mine and others since I've  
10    been at McKesson, yes.

11    BY MR. HAWAL:

12             Q     And who -- who else would have  
13     implemented or created these changes?

14             A     Several folks within the Regulatory  
15     Affairs program. Input from counsel, input from  
16     analytical folks.

17             Q     And over what period of time were these  
18     steps taken?

19             A     We continue to evolve our program on  
20     a --

21             Q     Well --

22             A     -- continuously.

23             Q     -- this was dated September 1st, 2015.  
24     When did this program begin at McKesson of

1     strengthening its CSMP program as you describe in  
2     this slide?

3             A     As we spoke earlier today, there was a  
4     Lifestyle Drug Monitoring Program that started  
5     around 2018 that evolved into the Controlled  
6     Substance Monitoring Program in -- around 2008.  
7     And we continued to -- we've continued to evolve  
8     our program --

9             Q     I'm not interested in past evolution.  
10    I'm interested in what you've done since you  
11    joined McKesson in 2013.

12                   Is that depicted here on this slide 8?

13             A     It is.

14             Q     All right. One of the things that you  
15    did was you established strong governance?

16             A     We did.

17             Q     What's that mean?

18             A     We have a national governance committee  
19    made up of senior executives within McKesson that  
20    are provided briefings and overviews on our  
21    program, some of the different issues that might  
22    be impacting our program or our customers as it  
23    relates to controlled substances.

24                   We have what we call the Regulatory

1     Affairs operating committee, which is made up of  
2     senior executives within the regulatory program,  
3     myself, my boss, my colleagues at my level. We  
4     oversee policies and procedures and overview that.  
5     Those are some examples of the governance.

6             Q     And was this something that was started  
7     in 2014 or 2015, or can you tell us when it was  
8     started?

9             A     I believe sometime around 2014.

10            Q     All right. And the purpose of that is  
11     to provide diligent oversight over McKesson's  
12     obligations to conform to the federal laws and  
13     regulations relating to maintaining effective  
14     controls to prevent diversion?

15                   MR. STANNER: Object to the form.

16                   THE WITNESS: It is -- it is.

17     BY MR. HAWAL:

18            Q     And this could have been implemented in  
19     2005?

20                   MR. STANNER: Object to the form.

21     BY MR. HAWAL:

22            Q     Feasible?

23            A     I don't -- I don't know that there  
24     wasn't governance at that point in time. It may

1 not have been called the same thing or whatever,  
2 or whether or not there was senior executives  
3 overseeing or not, I -- I don't know.

4 Q I didn't ask you whether you knew  
5 whether that existed.

6 My question is, would that be something  
7 that would be feasible to have been created at a  
8 company like McKesson in 2005, for example?

9 MR. STANNER: Object to the form.

10 THE WITNESS: I'm not sure that it  
11 wasn't done --

12 BY MR. HAWAL:

13 Q I didn't ask you -- I'm asking you if it  
14 was feasible to have created such a program if it  
15 hadn't been in place.

16 A If it did --

17 MR. STANNER: Same objection.

18 THE WITNESS: -- yes.

19 BY MR. HAWAL:

20 Q If it --

21 THE REPORTER: Excuse me. We're talking  
22 at the same time.

23 BY MR. HAWAL:

24 Q In 2000, would it be feasible?

1           A     Yes.

2           Q     The next thing you mention is a larger  
3     and experienced regulatory team. What does that  
4     mean?

5           A     We expanded the number of people on our  
6     team. We brought in different experience,  
7     expertise and skill sets to our team as we evolved  
8     our program.

9           Q     And that would have been feasible in  
10    2000 and in 2005?

11                   MR. STANNER: Objection to the form.

12                   THE WITNESS: I believe it could have  
13    been, yes.

14    BY MR. HAWAL:

15           Q     Why did you create a larger and more  
16    experienced regulatory team after you came on  
17    board to McKesson?

18           A     Our -- our program and the policies and  
19    procedures and the due diligence reviews that we  
20    conduct on our customers expanded and was more  
21    in-depth. It required a larger team to do that.

22           Q     Okay. The next point you made to the  
23    Attorney General was oversight and strong  
24    leadership by senior diversion experts.

1                   Anything particularly stand out as far  
2   as what change was made in that regard?

3                   MR. STANNER:   Object to the form.

4                   THE WITNESS:   Nothing stands out about  
5   that, no.

6   BY MR. HAWAL:

7               Q     That's something that could have been  
8   done in 2000 and 2005, true?

9                   MR. STANNER:   Same objection.

10                  THE WITNESS:   That's true.

11   BY MR. HAWAL:

12               Q     The next thing you mention is a  
13   comprehensive diligence of new and existing  
14   customers.   Right?

15               A     Yes.

16               Q     And what -- what did that -- what does  
17   that mean?   How -- how was that changed from what  
18   it had been to now you have a comprehensive  
19   diligence of new and existing customers?

20               A     We do a more in-depth review of the  
21   customers in terms of expanded questions that we  
22   ask the customers.   More frequent -- at -- more  
23   frequently we ask them to provide data to us to  
24   help us review that customer.   We conduct some

1 more open source datasets to look at anything that  
2 may be on the internet or OIG database to look  
3 into that, whether or not any sanctions have been  
4 there. We leverage various other data sources.

5 Q And that's again something that could  
6 have been done in 2000, 2005?

7 MR. STANNER: Object to the form.

8 THE WITNESS: Actually, some of that may  
9 not have been available back then. Some of the  
10 dataset or data things, they may not have been  
11 available. We use software that's available today  
12 that wasn't available back then.

13 BY MR. HAWAL:

14 Q Well, in a general sense, the more  
15 comprehensive diligence of new and existing  
16 customers is something that could have been done  
17 in multiple different ways. True?

18 MR. STANNER: Same objection.

19 THE WITNESS: It could be. It's just  
20 what we use today, some of the tools that are  
21 available to us today to do that were not  
22 available, you know, 20 years ago.

23 BY MR. HAWAL:

24 Q And then you go on to say now you have a

1 rigorous threshold change request approval  
2 process, right?

3 A That's correct.

4 Q And how -- how has it changed to become  
5 a rigorous threshold change request approval  
6 process?

7 MR. STANNER: Same objection. Calls for  
8 speculation.

9 THE WITNESS: What we do is we take the  
10 opportunity of a threshold change request to not  
11 just look at the request but to refresh the due  
12 diligence review of that customer, to review the  
13 licensure of the staff at, say, a pharmacy, the  
14 pharmacists and the technicians to see whether or  
15 not they have any disciplinary action that may  
16 have occurred since the first time we did that.  
17 So those are -- those are some of the things that  
18 we do.

19 BY MR. HAWAL:

20 Q Again, something that could have been  
21 done in 2000 and 2005, right?

22 A That's correct.

23 MR. STANNER: Same objection.

24 THE REPORTER: Excuse me.

1 MR. STANNER: You got to pause so I  
2 can --

3 THE WITNESS: My fault.

4 MR. STANNER: Same objection, calls for  
5 speculation. Go ahead.

6 BY MR. HAWAL:

7 Q A rigorous threshold change request  
8 approval process would encompass making sure that  
9 the customer has legitimate business reasons for  
10 requesting a threshold increase?

11 A That would be part of it, yes.

12 Q And in fact, as you know from your work  
13 at McKesson, that is something that was supposed  
14 to have been done at McKesson before a threshold  
15 change increase was made going back to 2007, 2006  
16 time frame, true?

17 MR. STANNER: Object to the form.

18 THE WITNESS: I don't know if it wasn't  
19 done back then or not.

20 BY MR. HAWAL:

21 Q I didn't ask you that, sir. Was it  
22 supposed to have been done?

23 MR. STANNER: Same objection.

24 THE WITNESS: It was part of the review

1 process, yes.

2 BY MR. HAWAL:

3 Q And sophisticated analytical tools,  
4 you're talking about the algorithms that we  
5 briefly touched on before there?

6 A Not in that context, no.

7 Q All right. What is the sophisticated  
8 analytical tools? What are you referring to  
9 there?

10 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15 it's able to provide some analytical --

16 Q Well, give me an example, if you would,  
17 please. Here you say you put in your customers'  
18 purchase history or information. What -- what  
19 kind of information is generated to you that you  
20 find to be useful for diversion control from that  
21 program?

[REDACTED]  
[REDACTED]  
[REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED]

3 different analytical things like that.

4 Q That's -- that's information that could  
5 have been generated and analyzed back in 2000 and  
6 2005, perhaps not with the same software but in  
7 some fashion, true?

8 MR. STANNER: Object to the form.

9 THE WITNESS: Probably in some fashion,  
10 just not with the robust ability that -- as that  
11 software affords us.

12 BY MR. HAWAL:

13 Q And then you have: "Our focus on  
14 improving awareness and providing better tools for  
15 successful compliance."

16 Is there anything specific that you're  
17 referencing there?

18 A I don't recall off the top of my head,  
19 no.

20 Q And then you say: "Improved education  
21 and training." Right?

22 A Yes.

23 Q And improved education and training  
24 about diversion control and effective mechanisms

1 to look for it and -- and deal with it?

2 A This is probably a little bit more  
3 all-encompassing. It's internal training and  
4 education, it's external training and education.  
5 We provide training and education to our customers  
6 about trends, about other evolving regulations  
7 that might -- might be evolved within that would  
8 impact our program or their ability --

9 Q And that -- that could have been done in  
10 2000 and 2005, true?

11 MR. STANNER: Object to the form.

12 THE WITNESS: That's true.

13 BY MR. HAWAL:

14 Q Let's look at slide 28.

15 MR. STANNER: If the folks on the phone  
16 could mute their line, that would be great.

17 BY MR. HAWAL:

18 Q Slide 28 identifies under the heading of  
19 "Purpose and General Guidance," "McKesson has a  
20 legal obligation to provide effective controls to  
21 guard against theft and diversion of controlled  
22 substances, and to design and operate a system to  
23 identify suspicious orders of controlled  
24 substances. As part of McKesson's Controlled

1 Substance Monitoring Program (CSMP), McKesson  
2 conducts regulatory investigative assessments of  
3 its customers."

4 That is an obligation that has existed  
5 with McKesson going back to 1970. True?

6 MR. STANNER: Object to the form.

7 THE WITNESS: That's true.

8 BY MR. HAWAL:

9 Q And then you say: "Assessments" -- the  
10 last paragraph -- "Assessments are regulatory in  
11 nature and should not be influenced by the  
12 customer's overall sales volume, profitability or  
13 strategic importance to the company." Right?

14 A That's correct.

15 Q In other words, large chains that  
16 provide McKesson with billions of dollars in -- in  
17 sales and profits should not be afforded any  
18 additional latitude than one would expect of a  
19 small retail pharmacy in terms of diversion  
20 control issues.

21 MR. STANNER: Object to --

22 BY MR. HAWAL:

23 Q Fair?

24 MR. STANNER: I'm sorry. Object to the

1 form.

2 THE WITNESS: That -- that's correct.

3 BY MR. HAWAL:

4 Q And then to the right, you have:

5 "Thorough customer diligence review is completed  
6 for new customer onboarding, threshold change  
7 requests, proactive reviews, and event triggers --  
8 triggered reviews. Every diligence review is  
9 documented. Reports kept in customer due  
10 diligence files."

11 Those are the steps that your company  
12 takes or should take with regard to performing due  
13 diligence reviews of customers?

14 A They're steps that we take in our  
15 program.

16 Q How long has it been the practice of  
17 McKesson to document diligent -- due diligence  
18 reviews of customers?

19 MR. STANNER: Object to the form.

20 THE WITNESS: I believe there was  
21 documentation before I came.

22 BY MR. HAWAL:

23 Q Is it your understanding that that was  
24 something that should have been done -- that was

1     done or should have been done going back to 2005,  
2     for example?

3                   MR. STANNER:   Same objection.

4                   THE WITNESS:   I -- it could -- should  
5     have been documented, yes.

6     BY MR. HAWAL:

7           Q     And then you have "Reports kept in  
8     customer due diligence files," that would likewise  
9     be something that should have been done going back  
10    to 2005?

11                  MR. STANNER:   Same objection.

12    BY MR. HAWAL:

13           Q     At least?

14                  MR. STANNER:   Same objection.

15                  THE WITNESS:   I would agree with that,  
16    yes.

17    BY MR. HAWAL:

18           Q     Let's go to slide 38.

19                   The last bullet point says:   "Orders  
20     that exceed monthly threshold are blocked and not  
21     shipped to the customer."

22                   When was that process or policy  
23     implemented at McKesson?

24                  MR. STANNER:   Objection to the form.

1 THE WITNESS: I assume they were  
2 blocking shipments before I came to the company.

3 BY MR. HAWAL:

4 Q Again, something that you would have  
5 expected to be done back to 2005, at least?

6 MR. STANNER: Object to the form.

7 THE WITNESS: As far as I know, it was  
8 being done then, yeah.

9 BY MR. HAWAL:

10 Q Yeah. When you say "it was being done,"  
11 have you gone back to make sure that every  
12 threshold -- every order that exceeded the monthly  
13 threshold that was blocked was not shipped to the  
14 customer?

15 MR. STANNER: Objection to the form,  
16 calls for speculation.

17 BY MR. HAWAL:

18 Q Have you gone back to make that  
19 determination?

20 A I did -- I have not.

21 (Plaintiffs' Exhibit No. 15 was  
22 marked for identification.)

23 BY MR. HAWAL:

24 Q Was that Exhibit 14?

1           A       Yes.

2           Q       I'm handing you what we've marked as  
3   Exhibit 15.  It's an e-mail chain --

4                   MR. WOLFE:  I don't --

5                   MR. HAWAL:  Yeah, it's 692, but I'm not  
6   sure that you have it, Evan.  I may put it on the  
7   ELMO.

8   BY MR. HAWAL:

9           Q       I'm handing you what we marked as  
10   Exhibit 15.  Is an e-mail chain, MCKMDL00543692,  
11   that references daily and suspicious orders  
12   electronic reporting.

13                   The e-mail at the bottom appears to be  
14   from someone at the Department of Justice.  Do you  
15   know who Neil Goretsas is?

16           A       I recall him being employed when I was  
17   there at --

18           Q       At DEA?

19           A       Yes.  I don't -- I don't --

20           Q       Well, he is apparently providing someone  
21   at McKesson, specifically Jenny Melton, some  
22   information about sending daily and suspicious  
23   order reports.

24                   Do you see that?

1 MR. STANNER: Objection to the form of  
2 the question.

3 THE WITNESS: I do.

4 BY MR. HAWAL:

5 Q Do you know who Jenny Melton is?

6 A I've been on some conference calls  
7 throughout my tenure at McKesson that she was on.

8 Q Is she with Regulatory Affairs, do you  
9 know?

10 A I know she's not.

11 Q Okay. According to Jenny Melton's  
12 e-mail referencing Mr. Goretsas's e-mail, she says  
13 she was not aware that there would be a suspicious  
14 order report. "Can you shed light on that? Are  
15 they looking for our existing suspicious report  
16 being sent to the federal level or is this  
17 something else?"

18 And she's sending that to Donald Walker,  
19 who responds: "It is not my understanding that we  
20 would transmit any suspicious orders."

21 Don Walker was in Regulatory Affairs,  
22 correct?

23 MR. STANNER: Object to the form.

24 THE WITNESS: He was the senior vice

1 president over the distribution operations, and as  
2 part of his duties and responsibilities, the  
3 Regulatory Affairs folks reported up to him.

4 BY MR. HAWAL:

5 Q Does it surprise you that this e-mail  
6 chain indicates that it was Mr. Walker's  
7 understanding that suspicious order reports would  
8 not be transmitted?

9 MR. STANNER: Objection to the form.

10 THE WITNESS: I don't know that I could  
11 comment on this without knowing more information  
12 or the context of all of this.

13 BY MR. HAWAL:

14 Q When you were with the DEA, did you  
15 expect suspicious order reports to be sent to DEA  
16 by a company like McKesson?

17 MR. SATIN: Objection. Pursuant to  
18 Touhy, do not answer that, to the extent that  
19 doing so would reveal information you obtained  
20 while at DEA.

21 BY MR. HAWAL:

22 Q Are you willing to answer that, sir?

23 A I'm not able to answer that at this  
24 time.

1           Q     Are you -- you mentioned -- you  
2     referenced Mr. Hammergren's testimony before  
3     Congress previously.

4           Mr. Hammergren, you're aware, testified  
5     before Congress in his capacity as president of  
6     McKesson dealing with the opioid crisis.

7           A     It was my understanding he testified as  
8     the CEO of the company.

9           Q     Okay.

10          A     But -- I'm aware of that.

11          Q     Did you -- were you present for that  
12     hearing or did you listen to it?

13          A     I was not present, but, yes, I did  
14     listen to it.

15          Q     Do you remember that Mr. Hammergren  
16     testified before Congress that if McKesson had its  
17     current algorithm in place in 2007, that orders  
18     which exceeded thresholds would not have been  
19     shipped? Do you recall that?

20                 MR. STANNER: Object to the form.

21                 THE WITNESS: I don't recall  
22     specifically that, but I'll take your word for it.

23     BY MR. HAWAL:

24          Q     Well, does that -- does that sound

1 correct that --

2 A I don't have any reason to doubt it.

3 Q Have you or anyone at McKesson gone back  
4 and run the data on opioid shipments from 2007 to  
5 2012 or any other past period through your current  
6 algorithms?

7 MR. STANNER: Object to the form.

8 THE WITNESS: Through our current  
9 algorithms?

10 BY MR. HAWAL:

11 Q Yes, to see what shouldn't have been  
12 shipped and was shipped during that time period.

13 A Not to my knowledge.

14 Q Is that something that can be done?

15 MR. STANNER: Object to the form. Calls  
16 for speculation.

17 THE WITNESS: I don't know. I don't  
18 know how far back the data is in the system, so  
19 I -- I'm not qualified to answer that question.

20 BY MR. HAWAL:

21 Q If the data was available, that would  
22 permit one to determine what amount of opioids  
23 should not have been shipped or supplied to  
24 individual customers anywhere in the United

1 States, true?

2 MR. STANNER: Same objection,  
3 speculation.

4 THE WITNESS: Yeah, I -- I'm not  
5 qualified to answer it. I -- I would assume that  
6 that would be the case, but I'm not qualified --  
7 I'm not an IT person.

8 BY MR. HAWAL:

9 Q Have you or anyone else at McKesson made  
10 any effort to compare how many due diligence files  
11 or investigations exist before 2014 in comparison  
12 to how many should exist?

13 MR. STANNER: Object to the form.

14 THE WITNESS: I've not conducted that,  
15 and I'm not aware that anyone else has.

16 BY MR. HAWAL:

17 Q Have you or anyone else at McKesson gone  
18 back to determine how many threshold increases  
19 done by McKesson did not have a legitimate  
20 business justification or diligence documentation?

21 MR. STANNER: Same objection.

22 THE WITNESS: I have not done that, and  
23 I'm not aware of anyone else doing it.

24 (Plaintiffs' Exhibit No. 16 was

1 marked for identification.)

2 BY MR. HAWAL:

3 Q Sir, I'm handing you what we've marked  
4 as Exhibit 16.

5 It's a number of statements that I'm  
6 going to ask you whether you agree with that apply  
7 to establishing opioid thresholds at McKesson.

8 Do you agree that thresholds are a  
9 critical part of CSMP at McKesson?

10 MR. STANNER: Objection. Form and  
11 foundation.

12 THE WITNESS: I think they're an  
13 important part of our program, yes.

14 BY MR. HAWAL:

15 Q And they were an important part of  
16 McKesson's program certainly going back to the  
17 creation of the CSMP in 2008 with its settlement  
18 agreement, right?

19 MR. STANNER: Same -- same objection.

20 MR. SATIN: Objection with respect to  
21 Touhy. Don't answer if it would -- if your answer  
22 would reveal information about your time at the  
23 DEA.

24 THE WITNESS: It is my understanding

1     they were -- started back around 2007 under the  
2     Lifestyle Drug Monitoring Program.

3     BY MR. HAWAL:

4             Q     And do you agree that McKesson takes  
5     great care in setting thresholds, or should?

6             A     I -- McKesson does take great care in  
7     setting thresholds.

8             Q     And they should have taken great care in  
9     doing so back to 2007, correct?

10            MR. STANNER: Object to the form.

11            THE WITNESS: I don't know that they  
12     didn't.

13     BY MR. HAWAL:

14            Q     I didn't ask you that. I'm asking you  
15     whether they should have.

16            A     I think it would have been an important  
17     thing, yes.

18            Q     And would you agree that each customer  
19     is unique so that the threshold is specific to  
20     each customer's business needs? Is that a true  
21     statement?

22            A     I would agree with it, yes.

23            Q     And McKesson should make informed  
24     decisions based on established threshold

1 information. Is that a fair statement?

2 MR. STANNER: Object to the form.

3 THE WITNESS: I agree with the  
4 statement, yes.

5 MR. HAWAL: I didn't mean to throw it.

6 MR. STANNER: I was going to say, I'm  
7 going to give you the benefit of the doubt that  
8 but you didn't mean to throw it.

9 (Plaintiffs' Exhibit No. 17 was  
10 marked for identification.)

11 BY MR. HAWAL:

12 Q Have you seen this e-mail before, dated  
13 December 27th, 2010?

14 A I don't believe I've ever seen this  
15 document.

16 Q This is a document from Jay Kramer -- or  
17 to Jay Kramer from SharePoint?

18 MR. STANNER: Object to the form.

19 BY MR. HAWAL:

20 Q It's MCK\_00168027.

21 MR. STANNER: So just for the record, it  
22 doesn't have the MDL Bates on it, so maybe it's  
23 cut off due to some sizing or imaging. The -- I  
24 think it's 165027. Bill, I --

1 MR. HAWAL: Yeah, the copying -- it's  
2 been copied so many times, it -- it's hard to make  
3 out, but we've used it before.

4 MR. STANNER: Sure. It's a SharePoint  
5 e-mail dated Monday, December 27, 2010, at  
6 6:12 p.m.

7 BY MR. HAWAL:

8 Q Have you seen this before?

9 A I've never seen this before.

10 Q Are you familiar with SharePoint?

11 A I -- yes.

12 Q What -- what is SharePoint?

13 A SharePoint's kind of a software system  
14 that McKesson and other companies use as a way to  
15 manage certain functions.

16 Q And is Dale's Pharmacy familiar to you?

17 A It is not.

18 Q No? I want you to assume that Dale's  
19 Pharmacy was indicted for distributing, selling  
20 opioids to illicit customers in the state of  
21 Colorado.

22 But do you see that the alleged business  
23 decision that was used to justify increasing the  
24 threshold by 8,000 doses of oxycodone was

1 increased in volume during the holidays?

2 MR. STANNER: Object to the form.

3 THE WITNESS: I do.

4 BY MR. HAWAL:

5 Q Do you think that's a legitimate  
6 business decision, sir?

7 A I think that one of the nuances, and  
8 particularly as we're going to the end of the  
9 year, in this particular circumstance it appears  
10 that this was in December of 2010, what I've seen  
11 through my experience is that at that particular  
12 time of the year sometimes people are using the  
13 end of their flexible spending accounts or other  
14 things that might not roll over into the next  
15 year. And there is an increase in surgeries and  
16 other things at that point in time of the year  
17 that would have maybe have contributed to business  
18 growth at that -- at that point. So...

19 Q Which is pure speculation on your part,  
20 correct?

21 MR. STANNER: Objection. You've asked  
22 him to speculate.

23 THE WITNESS: Yeah, that was my  
24 understanding. You asked for my opinion on it.

1 BY MR. HAWAL:

2 Q Well, let me ask you this: There were  
3 only four days left in that month, right? This is  
4 December 27th.

5 A That's correct.

6 Q And this customer is getting an increase  
7 of 8,000 doses for that month's threshold for  
8 oxycodone, right?

9 A I see that.

10 Q Do you know if that increase was made  
11 permanent?

12 A No --

13 MR. STANNER: Objection to the form.

14 THE WITNESS: -- I don't know that.

15 BY MR. HAWAL:

16 Q Would that trouble you?

17 A Not necessarily, without knowing more  
18 information.

19 Q And that was approved by Tom McDonald?

20 A That's what it says.

21 MR. STANNER: Object to the form.

22 THE REPORTER: That's what it says?

23 THE WITNESS: That's what it says.

24 BY MR. HAWAL:

1           Q     And Mr. McDonald was the director of  
2     Regulatory Affairs for the Aurora, Colorado  
3     facility that prompted a 23-page letter from the  
4     Department of Justice outlining a series of  
5     violations of the Controlled Substances Act that  
6     we've discussed previously, correct?

7                     MR. STANNER: Object to the form.

8                     THE WITNESS: That's correct.

9     BY MR. HAWAL:

10           Q     We talked earlier about McKesson  
11     changing their practice of threshold increases to  
12     increase them with a threshold warning report, and  
13     then proactively contacting the customer to see if  
14     they needed an increase before they ever bumped up  
15     against their threshold.

16                     Do you remember that?

17           A     I do.

18                     MR. STANNER: Objection.

19     BY MR. HAWAL:

20           Q     Do you know that that was the practice  
21     at McKesson?

22                     MR. STANNER: Objection to the form.

23                     THE WITNESS: I do.

24                     (Plaintiffs' Exhibit No. 18 was

1 marked for identification.)

2 BY MR. HAWAL:

3 Q I'm handing you what we marked as  
4 Exhibit 18, is MCKMDL00596566, which is a  
5 Controlled Substance Monitoring Program document.

6 And if we look at the next page, it  
7 instructs customers -- or it instructs employees  
8 to advise customers that thresholds are not  
9 published and are based on a 12-month purchase  
10 history plus an additional margin to account for  
11 growth, new customers.

12 So, in other words, McKesson had been  
13 setting its thresholds at a certain level based  
14 upon past sales, but included a buffer to  
15 accommodate for potential increased business.  
16 Right?

17 MR. STANNER: Objection to the form,  
18 compound.

19 BY MR. HAWAL:

20 Q Is that your understanding of what was  
21 being done based on your current employment at  
22 McKesson?

23 MR. STANNER: Same objection.

24 THE WITNESS: That's what it says in the

1 document.

2 BY MR. HAWAL:

3 Q Was it your understanding that's what in  
4 fact had been happening at McKesson?

5 MR. STANNER: Same objection.

6 THE WITNESS: To some extent, yes.

7 BY MR. HAWAL:

8 Q All right. The general threshold for  
9 independent retail pharmacies was 5,000, and  
10 McKesson added the \$3,000 -- or 3,000 increase to  
11 accommodate for potential new growth and new  
12 customers, right?

13 MR. STANNER: Objection --

14 BY MR. HAWAL:

15 Q Is that your understanding?

16 MR. STANNER: Objection to the form.

17 THE WITNESS: I have not had any  
18 understanding of that granularity of how that was  
19 done.

20 BY MR. HAWAL:

21 Q Now, according to the next page, it  
22 says, you know, in terms of what should be  
23 communicated to the customer, it says: "Tell  
24 caller that you will forward the request, and that

1 someone from the McKesson Distribution Center will  
2 call if the request is denied. Otherwise, the  
3 caller can consider the request approved."

4 And that would be in reference to  
5 threshold increases, correct?

6 MR. STANNER: Objection.

7 BY MR. HAWAL:

8 Q The default was that unless you hear  
9 otherwise, consider the increase in your threshold  
10 to be approved. Is that a fair interpretation of  
11 that paragraph?

12 MR. STANNER: Object to the form.

13 THE WITNESS: I think that that's what  
14 it says, yes.

15 (Plaintiffs' Exhibit No. 19 was  
16 marked for identification.)

17 BY MR. HAWAL:

18 Q I'm handing you what we marked as  
19 Exhibit 19. It's another Controlled Substance  
20 Monitoring Program document relating to  
21 thresholds. Correct?

22 A That's correct.

23 Q And what it provides is that:

24 "Customers are proactively contacted when they

1 near their threshold to facilitate the possible  
2 increase of the threshold by the distribution  
3 center manager." Right?

4 A I think you read that correctly, yes.

5 Q And the policy on the next page that is  
6 identified is, "The company will proactively  
7 contact the customers when they reach 85 percent  
8 of their threshold."

9 Do you see that?

10 A I see that.

11 Q So as we discussed earlier, McKesson had  
12 a policy that customers that reached 85 percent of  
13 their threshold would be -- would be contacted to  
14 proactively see if they wanted to get an increase  
15 in their monthly allotment or limit of opioids,  
16 right?

17 A I see that, yes.

18 Q And in fact, a suggested talking point  
19 was identified. It says: Hello, my name is,  
20 blank. I'm calling from McKesson's ServiceFirst.  
21 May I speak to blank or who is the contact person  
22 at the pharmacy. I'm looking at your controlled  
23 substance monitoring threshold purchase history,  
24 and you're at 85 percent threshold. These are --

1     there are blank days left in the month, so you  
2     might want to check your shelves to make sure you  
3     have the inventory you need for the month. You  
4     will receive the notification on your invoice when  
5     you have reached 90 percent threshold of -- on  
6     controlled items.

7                     So, in other words, that would allow a  
8     customer to know exactly what their threshold was,  
9     right?

10                    MR. STANNER: Object to the form.

11                    THE WITNESS: I don't know if it would  
12     let them know exactly what it was, but --

13     BY MR. HAWAL:

14             Q     Well --

15             A     -- I understand that they would be able  
16     to --

17             Q     Figure it out.

18             A     -- figure something out close to that.

19             Q     You don't do that anymore, correct?

20             A     We do not.

21             Q     Was that something that you changed?

22             A     It was not.

23                     (Plaintiffs' Exhibit No. 20 was  
24                     marked for identification.)

1 BY MR. HAWAL:

2 Q I'm handing you what has been marked as  
3 Plaintiffs' Exhibit 20. It is an e-mail exchange  
4 between Tom McDonald and Jake Kramer whereby Tom  
5 McDonald is identifying a customer with a high  
6 oxycodone ratio and provides data relating to that  
7 customer. See that?

8 A I do.

9 Q So apparently Mr. McDonald is  
10 identifying several pharmacies, or at least one,  
11 that has a high oxycodone ratio.

12 What does that mean? Does that mean  
13 high in terms of comparison with other substances  
14 being sold to it?

15 MR. STANNER: Objection to form.

16 THE WITNESS: I believe that's the case,  
17 yes.

18 BY MR. HAWAL:

19 Q One of the red flags that you've  
20 identified before, high ratio?

21 A It -- it would be a red flag, yes.

22 Q And Mr. Kramer's response is "Everybody  
23 is high, Tom. Are we supposed to cut everyone  
24 off?"

1 Do you find that to be a troubling  
2 response by a McKesson employee when a red flag is  
3 identified regarding controlled substances?

4 MR. STANNER: Objection to form.

5 BY MR. HAWAL:

6 Q Particularly oxycodone?

7 MR. STANNER: Objection to form.

8 THE WITNESS: I do.

9 BY MR. HAWAL:

10 Q Are you familiar with Marc's Pharmacy as  
11 a customer of McKesson in the Akron and Cleveland  
12 area in Ohio?

13 A Not off the top of my head, no.

14 Q You indicated that you had discontinued  
15 the practice of providing customers with a  
16 threshold warning report as they were approaching  
17 their monthly limit for purchases of controlled  
18 substances, right?

19 MR. STANNER: Objection to the form.

20 MR. SATIN: Objection. The insinuation  
21 of some of your questions, when you use the word  
22 "you," if you could be clear as to whom you are  
23 referring to.

24 MR. HAWAL: I'm referring to you as

1 McKesson.

2 MR. STANNER: Well, I think that's the  
3 issue. To the extent he being -- he's being asked  
4 to speak for McKesson, I would have a standing  
5 objection to some of the earlier questions. I  
6 think he is here in his personal capacity. He can  
7 speak to what he personally knows.

8 BY MR. HAWAL:

9 Q Well, sir, you were -- you were retained  
10 by McKesson to make changes because of problems  
11 McKesson had been having with its Controlled  
12 Substance Monitoring Program and its  
13 anti-diversion procedures prior to your arrival,  
14 right?

15 MR. STANNER: Objection. Calls for  
16 speculation. Object to the form.

17 THE WITNESS: I was hired to work and  
18 oversee the regulatory program and improve it  
19 wherever we could --

20 BY MR. HAWAL:

21 Q Well --

22 A -- improve it and evolve it.

23 Q -- you knew that McKesson had had a  
24 problem that resulted in a settlement agreement

1 and fine in 2008 where they promised to make  
2 changes, and you know that changes -- well, you  
3 know that -- that problems continued that resulted  
4 in a \$150 -- a \$150 million settlement in 2000 and  
5 -- what was it, '18 or '17?

6 A '17.

7 Q '17. And those problems were occurring  
8 from 2008 through 2013, right?

9 MR. STANNER: Same objections, compound.

10 MR. SATIN: And objection pursuant to  
11 Touhy. Do not answer if it would reveal  
12 information you learned while at DEA.

13 THE WITNESS: I was not aware of the  
14 second matter until after I was retained by  
15 McKesson.

16 BY MR. HAWAL:

17 Q Right. But you -- do you understand  
18 that the reason they hired you as a former DEA  
19 agent was to come aboard and clean up what had  
20 been happening with regard to their anti-diversion  
21 programs?

22 MR. STANNER: Same objection, calls for  
23 speculation.

24 THE WITNESS: I don't know if I agree

1 with the characterization. I believe that I have  
2 skill sets that can help improve and expand a  
3 program and to continue to evolve that program.

4 BY MR. HAWAL:

5 Q I want you to assume that Marc's is a  
6 chain pharmacy that exists in Cuyahoga and Summit  
7 counties in Ohio, and this is -- well, I  
8 apologize. I haven't marked it or identified it.  
9 I'll do that.

10 (Plaintiffs' Exhibit No. 21 was  
11 marked for identification.)

12 BY MR. HAWAL:

13 Q I'm going to hand you what is marked as  
14 Exhibit 21, which is an e-mail dated January 27,  
15 2014, which provides -- with the subject "Marc's  
16 Threshold Warning Report."

17 Apparently in 2014, McKesson was still  
18 providing threshold warning reports as is  
19 reflected in this document, correct?

20 MR. STANNER: Objection to the form.

21 THE WITNESS: McKesson -- for chains,  
22 McKesson operates slightly different in terms of  
23 interacting with the compliance programs of the  
24 chains, and because the chains operate differently

1 based upon certain situations where they might  
2 self-warehouse for their entire group, there's a  
3 different exchange of information.

4 BY MR. HAWAL:

5 Q So I understand then that McKesson  
6 decided that it was a good business practice and  
7 good for its obligations under the Controlled  
8 Substances Act to no longer notify small retail  
9 pharmacies about their thresholds by providing  
10 threshold warning reports, but didn't think that  
11 that was a good practice as relates to the larger  
12 chain customers.

13 Is that my -- am I paraphrasing what you  
14 just said correctly?

15 MR. STANNER: Objection to the form.

16 THE WITNESS: Not at all. One is  
17 we're -- we're not doing that to comply with the  
18 Controlled Substances Act. We do that as a matter  
19 of course because the threshold for our  
20 independent small, medium chains, not the retail  
21 national chains, is to not disclose what that  
22 threshold is to them. It's different with the  
23 chains because of the business model that they  
24 have is vastly different than the business model

1 of an independent pharmacy, and we work with that  
2 company -- the chain company's regulatory folks to  
3 help understand what their chain stores need  
4 because they operate differently.

5 We don't -- excuse me -- we don't tell  
6 the individual stores. We work with the  
7 corporation -- corporate headquarters and their  
8 folks as it relates to the program and the  
9 operations and needs.

10 BY MR. HAWAL:

11 Q So the -- with the chains, someone at  
12 corporate headquarters makes the determination as  
13 to what the appropriate thresholds are for  
14 individual stores rather than McKesson doing so?

15 MR. STANNER: Objection to the form.

16 THE WITNESS: Typically McKesson will  
17 make the -- the thresholds. There may be some  
18 instances a chain wants a more conservative one  
19 for either a particular store or a particular base  
20 code, and we work -- we interact and work with  
21 their compliance teams.

22 BY MR. HAWAL:

23 Q Well, let me ask you hypothetically, if  
24 a retail customer, who is not part of a chain,

1     wants a threshold increase, you require a  
2     legitimate business determination or explanation  
3     as to why that increase is -- is appropriate, and  
4     you do some due diligence investigation of that,  
5     correct?

6             A     That's correct.

7             Q     And you deem that to be part of your  
8     rigorous Controlled Substance Monitoring Program,  
9     true?

10            A     True.

11            Q     But you delegate that responsibility for  
12     the chains to someone at a corporate level, for  
13     example, with a company like CVS and in this case  
14     Marc's?

15                   MR. STANNER:  Objection to the form.  
16     You used the word "delegate."

17                   THE WITNESS:  I think that you  
18     completely misunderstood me.  We work with them.  
19     We still conduct due diligence reviews of the  
20     chains.  We still conduct threshold change  
21     requests and due diligence and justification at a  
22     chain level store.  We just do that through the  
23     corporate entity, such as a CVS or a Rite Aid,  
24     because they have a structured regulatory team.

1                   We still do due diligence, and we still  
2   do a threshold change request on those customers  
3   regardless of whether they're a chain or whether  
4   they're an independent.

5   BY MR. HAWAL:

6               Q     So you're saying that a CVS store in  
7   Pensacola, Florida, that wants a threshold change  
8   increase contacts McKesson, and McKesson does due  
9   diligence at that store location to determine  
10   whether an increase is justified at that location?  
11   Is that what you're saying?

12               MR. STANNER:   Objection to the form.

13               THE WITNESS:   Not at all.   What I'm  
14   saying is, if an individual store, or in this case  
15   as an example a CVS chain, if an individual CVS  
16   store needed an increase, they would work through  
17   their corporate headquarters, and we would be  
18   working through the corporate headquarters with  
19   them to do that.

20   BY MR. HAWAL:

21               Q     So you're taking -- you're taking  
22   someone at corporate headquarters at their word  
23   that they are doing some type of due diligence for  
24   a given store that they own as to whether or not a

1 threshold increase is justified.

2 MR. STANNER: Objection --

3 BY MR. HAWAL:

4 Q Fair?

5 MR. STANNER: Objection to the form,  
6 misstates.

7 THE WITNESS: No, again you're  
8 completely mischaracterizing or misunderstanding  
9 me.

10 BY MR. HAWAL:

11 Q Well --

12 A They -- they would submit -- a local  
13 individual store would submit a request up through  
14 their corporate headquarters and their regulatory  
15 team. Then we would get that receipt into us, and  
16 we would conduct a due diligence review and work  
17 with the corporate headquarters to get that  
18 information that we need to conduct our due  
19 diligence review that we do, and assess whether or  
20 not we're going to grant that --

21 Q And --

22 A -- threshold request.

23 Q And what due diligence review do you do  
24 at that individual store whose threshold is being

1 requested to be increased?

2 MR. STANNER: Objection to the form.

3 THE WITNESS: We would look at  
4 potentially their purchase history for that  
5 particular base code. We would look at whether or  
6 not they have been omitting for that particular  
7 base code, whether or not we thought there was a  
8 need for it based on the justification, and what  
9 their current level was. And we might deny the  
10 threshold request, we might grant part of it or we  
11 might grant all of it.

12 BY MR. HAWAL:

13 Q And if that kind of due diligence is not  
14 done, that would be a violation of your CSMP.

15 Correct?

16 MR. STANNER: Objection to the form.

17 THE WITNESS: It would not be -- it  
18 would be within our protocols.

19 BY MR. HAWAL:

20 Q CVS one of your customers?

21 A CVS Caremark, I believe, yes.

22 Q How long?

23 A I'm -- I deal with the independent  
24 small, medium chains, and my counterpart, Nate

1 Hartle, is responsible for overseeing the national  
2 chains.

3 Q And isn't Tom McDonald, who we've talked  
4 about previously, isn't he in some capacity  
5 overseeing some of the chains, including CVS?

6 A No, he's not.

7 Q He's not. Was he?

8 A He may have before I came on. I  
9 don't -- I don't know that.

10 MR. STANNER: Yes, let me just note  
11 quickly for the record here, there's a previous  
12 answer of the witness: "It would be -- it would  
13 be within our protocols." I think it's  
14 mistranscribed. I think the testimony is: "It  
15 would not be within our protocol."

16 (Plaintiffs' Exhibit No. 22 was  
17 marked for identification.)

18 BY MR. HAWAL:

19 Q Mr. Boggs, was what your lawyer just  
20 said accurate?

21 A It is.

22 Q I'm handing you what we've marked as  
23 Exhibit 22, which is a series of e-mails between  
24 someone at McKesson and someone at CVS.

1                   Are you aware that CVS had not been --  
2   was refusing to provide data that McKesson was  
3   requesting as to the amount of controlled  
4   substances that were being sold and dispensed at  
5   its individual stores?

6                   MR. STANNER: Object to the form.

7                   And if you need time to read the  
8   document, it's fairly lengthy.

9                   Counsel, if there a specific point --  
10   part you want to point us to, let -- also I don't  
11   believe that --

12                  MR. HAWAL: I'm sorry.

13                  MR. STANNER: I don't believe this -- I  
14   don't believe the document that's up there is this  
15   document, unless I'm missing something. I have  
16   MCKMDL00627048.

17                  MR. HAWAL: That's what I'm referring  
18   to, but -- let me put it on the ELMO.

19                  Can you zoom in on it, Evan? Okay.  
20   Thank you.

21   BY MR. HAWAL:

22                  Q     The e-mail -- this is MCKMDL00627048.  
23   The e-mail is from Ned McKenna to Brian Whalen,  
24   with copies to Tom McDonald and others, and

1 including Donald Walker.

2 And it references -- it says: "Brian,  
3 for your information, prior to the transition and  
4 in an effort to be proactive in the -- proactive  
5 as we set the CSMP thresholds for these 164  
6 stores, we asked CVS for the three months of sales  
7 data. We were told we could not have it. More  
8 recently we again asked for their most recent  
9 three months of sales from CVS. Once again, we  
10 were told we could not have the data. Our  
11 thinking with both requests was that if we had CVS  
12 actual data, we could collaborate with CVS and set  
13 very accurate and functional CSMP thresholds.  
14 Unfortunately, we still do not have any CVS sales  
15 data, except for McKesson's actual sales from July  
16 after the transition was up and running."

17 Are you aware, sir, or do you recall  
18 that CVS refused to provide on a consistent basis  
19 sales data that you were requesting in an effort  
20 to set thresholds at various of their pharmacies?

21 MR. STANNER: Object to the form,  
22 speculation. Vague, "you."

23 MR. SATIN: Again, also you used the  
24 word -- this is a 2010 document, and he wasn't at

1 McKesson.

2 BY MR. HAWAL:

3 Q Well, are you -- are you aware going  
4 forward that CVS has refused to provide sales data  
5 for its various individual stores?

6 MR. STANNER: Objection.

7 THE WITNESS: I don't know if that's the  
8 case currently or not. I have no -- I -- I don't  
9 know that.

10 BY MR. HAWAL:

11 Q If they did refuse that, would that be a  
12 problem?

13 MR. STANNER: Object to the form.  
14 Hypothetical.

15 THE WITNESS: It would be a concern over  
16 what CVS's reasoning would be for not providing it  
17 or whatever. I don't know what the -- the  
18 foundation of it is.

19 BY MR. HAWAL:

20 Q It is your understanding that CVS has  
21 a -- has its own suspicious order monitoring  
22 program?

23 A CVS would not have a suspicious order  
24 monitoring program.

1           Q     It would not have its own, is that what  
2     you're saying?

3           A     They don't -- they fill prescriptions to  
4     patients. They don't --

5           Q     I'm talking about its corporate -- you  
6     said you deal with the chains' corporate  
7     representatives.

8           A     Right.

9           Q     Does the corporate headquarters have  
10    some type of Regulatory Affairs department or  
11    suspicious monitoring program?

12                   MR. STANNER: Objection to the form. He  
13    did not said that he did it personally.

14                   THE WITNESS: They would have a  
15    suspicious order -- or, I'm sorry, they would have  
16    a Controlled Substance Monitoring Program, but  
17    they would not have a suspicious order program.

18    BY MR. HAWAL:

19           Q     What does their controlled substance  
20    monitoring program consist of, if you know?

21           A     I -- I don't know.

22                   MR. STANNER: Object to the form.

23    BY MR. HAWAL:

24           Q     Who at the company should know that?

1 MR. STANNER: Object to the form.

2 THE WITNESS: I would say that Nate  
3 Hartle would be -- be knowledgeable about that.

4 BY MR. HAWAL:

5 Q Are you aware that CVS had multiple  
6 instances where they were fined by the Department  
7 of Justice as a result of their failure to  
8 appropriately implement a suspicious monitoring  
9 program and its failure to adhere to the  
10 obligations under the Controlled Substances Act  
11 and -- and regulations?

12 MR. STANNER: Object to the form.

13 THE WITNESS: I'm only aware of -- of  
14 one for that. I'm not aware of multiple ones.

15 (Plaintiffs' Exhibit No. 23 was  
16 marked for identification.)

17 BY MR. HAWAL:

18 Q Sir --

19 MR. HAWAL: Evan, I'm going to use the  
20 ELMO because you have the wrong one.

21 BY MR. HAWAL:

22 Q I'm handing you what we marked as  
23 Exhibit 23. It's a document from the United  
24 States Attorney's Office for the Eastern District

1 of California, referencing the fact that CVS had  
2 paid a \$5 million penalty to resolve allegations  
3 that it had violated the Controlled Substances  
4 Act.

5 Do you see that?

6 MR. STANNER: Object to the form.

7 THE WITNESS: From my reading of this,  
8 it -- it was a fine -- fine for recordkeeping  
9 violations.

10 BY MR. HAWAL:

11 Q Mm-hmm. In violation of the Controlled  
12 Substances Act?

13 A Or the implementing regulations, yes.

14 (Plaintiffs' Exhibit No. 24 was  
15 marked for identification.)

16 BY MR. HAWAL:

17 Q I'm handing you what we marked as  
18 Exhibit 24. It is another release from the U.S.  
19 Attorney's office for the District of  
20 Massachusetts where CVS paid \$3.5 million because  
21 its pharmacists were filling fake prescriptions.

22 MR. STANNER: Object to the form of the  
23 question.

24 THE WITNESS: I see that.

1 BY MR. HAWAL:

2 Q Were you aware of that?

3 A No, I was not.

4 (Plaintiffs' Exhibit No. 25 was  
5 marked for identification.)

6 BY MR. HAWAL:

7 Q I'm handing you what has been marked as  
8 Exhibit 25. It is another release from the U.S.  
9 Department -- or from, yeah, the U.S. Attorney's  
10 Office for the District of Rhode Island where CVS  
11 paid another civil penalty of \$450,000 for  
12 violations of the Controlled Substances Act by  
13 filling invalid prescriptions and maintaining  
14 deficient records.

15 MR. STANNER: Objection to the form.

16 THE WITNESS: I see it.

17 BY MR. HAWAL:

18 Q Aware of that -- were you aware of that?

19 A I was not aware of that, no.

20 (Plaintiffs' Exhibit No. 26 was  
21 marked for identification.)

22 BY MR. HAWAL:

23 Q Sir, I'm handing you what I've marked as  
24 Exhibit 26. Is that correct, is it 26 or 27?

1           A       26.

2           Q       Is -- this one is from the Western  
3   District of Oklahoma whereby CVS agreed to pay  
4   \$11 million to settle -- settle claims that it  
5   violated the Controlled Substances Act.

6                   MR. STANNER:  Objection to the form of  
7   the question.

8   BY MR. HAWAL:

9           Q       Do you see that?

10          A       I do see that.

11          Q       And at the bottom, in identifying the  
12   reasons, it said it created and entered and  
13   maintained invalid dummy DEA registration numbers  
14   other than the valid DEA registration numbers of  
15   the prescribing practitioners on dispensing  
16   records, and in filling prescriptions for certain  
17   prescribers whose DEA registration numbers were  
18   not current or valid.

19                   Were you aware of this civil penalty?

20                   MR. STANNER:  Objection to the form,  
21   assumes facts.  Calls for speculation.

22   BY MR. HAWAL:

23          Q       Which ones -- which CVS infractions were  
24   you aware of that resulted in some type of -- of

1 penalty or action by the Department of Justice?

2 A I'm aware of two CVS, Sanford, Florida,  
3 pharmacies that were -- there was some issues  
4 related to them. I don't know whether or not  
5 there was actually a fine or what the final  
6 outcome of that was, but I -- I'm aware of that  
7 one.

8 Q Do you believe that these types of  
9 reports would be monitored by someone at McKesson  
10 who is responsible for the CVS account?

11 MR. STANNER: Objection to the form.

12 THE WITNESS: I would expect that to  
13 some extent. I mean every -- every one of these  
14 appear to be a large -- there was a large focus  
15 related to the civil fine on recordkeeping  
16 violations.

17 BY MR. HAWAL:

18 Q Well, are recordkeeping violations  
19 important to you?

20 MR. STANNER: Objection to the form.  
21 Vague.

22 THE WITNESS: They're important, yes.

23 BY MR. HAWAL:

24 Q And do you believe that this type of

1 history with CVS would be something that McKesson  
2 should be aware of and should be monitoring?

3 A I -- to some degree, yes.

4 Q If -- if CVS refused to provide McKesson  
5 with data that McKesson deemed important enough  
6 for purposes of setting thresholds at McKesson --  
7 at CVS pharmacies, would you believe that it would  
8 be important as a former DEA agent to either  
9 insist on that data or tell a company like CVS,  
10 We're not going to do business with you unless you  
11 provide us with this data that we think is  
12 important?

13 MR. STANNER: Objection to the form,  
14 assumes facts.

15 THE WITNESS: I think it's important to  
16 get the data if it's relevant to the -- or needed  
17 to conduct a review of that customer. Whether or  
18 not the decision would be to not ship to -- to  
19 them in its entirety would be, again, based upon  
20 the facts and the circumstances.

21 MR. HAWAL: What are we on now, 28?

22 MR. STANNER: That last one was 26, I  
23 thought.

24 (Plaintiffs' Exhibit No. 27 was

1 marked for identification.)

2 BY MR. HAWAL:

3 Q I'm handing you what has been marked as  
4 Exhibit 27. It is several e-mails,  
5 MCKMDL00544143, between Bruce Skidgel and Donald  
6 Walker.

7 And I'm -- I want to highlight to you  
8 the last sentence of -- of Mr. Skidgel's e-mail  
9 where it appears that he would have no hesitation  
10 in terminating a customer given the fact that it's  
11 a small account.

12 Would that be a fair interpretation of  
13 what Mr. Skidgel is telling Mr. Walker?

14 MR. STANNER: Objection to the form.  
15 Foundation, speculation.

16 THE WITNESS: If I could just take a  
17 minute to read it.

18 BY MR. HAWAL:

19 Q Mm-hmm.

20 A (Peruses document.) Could you repeat  
21 your question?

22 Q Yeah. Do you believe that this  
23 indicates Mr. Skidgel's willingness to terminate a  
24 customer -- or willingness to terminate a customer

1     because the customer was a small account for  
2     McKesson?

3                     MR. STANNER:   Objection to the form.

4                     THE WITNESS:   That's what it says, I  
5     agree with that.

6     BY MR. HAWAL:

7             Q     Mr. Boggs, I'm going to hand you what we  
8     previously marked at your earlier deposition as  
9     Exhibit 6, MCKMDL00407451.

10                    MR. STANNER:   Is this 28?

11                    MR. HAWAL:    Yeah.

12     BY MR. HAWAL:

13             Q     And we're going to mark it as Exhibit 28  
14     for your deposition today.

15                    (Plaintiffs' Exhibit No. 28 was  
16     marked for identification.)

17     BY MR. HAWAL:

18             Q     You're familiar with the term  
19     "diversion," "drug diversion"?

20             A     I am.

21             Q     And what is your understanding -- well,  
22     strike that.

23                    Are you familiar with the term "drug  
24     migration" as it relates to diversion?

1           A       I am.

2           Q       In other words, drugs that find their  
3       way into the illegal distribution system in a  
4       given community will not remain in that community;  
5       they will -- some of those drugs will migrate to  
6       adjacent communities and even different states.  
7       Is that a fair statement as to what drug migration  
8       refers to?

9                   MR. STANNER:  Objection to form.

10                  THE WITNESS:  I agree with that.

11       BY MR. HAWAL:

12           Q       That is something that has been well  
13       recognized for quite a few years now?

14                   MR. STANNER:  Objection to form.

15                  THE WITNESS:  I -- I agree with the --  
16       the definition of it.  As long as it's been  
17       recognized, I don't know.

18       BY MR. HAWAL:

19           Q       In fact, I've heard the term referred to  
20       as the "Blue Highway."  Have you heard that  
21       phrase?

22           A       I've not heard that one, no.

23           Q       In any event, on page 465 of the -- this  
24       is a PowerPoint that you created; is that correct?

1           A       I believe so, yes.

2           Q       And on page 465 of this PowerPoint,  
3       there is a map of the United States, and the title  
4       is "Drug Diversion Migration Out of Florida," and  
5       it has a series of arrows.

6                   Is that intended to show where drugs  
7       that were being diverted in Florida were finding  
8       their way to different parts of the country?

9           MR. STANNER:   Objection to the form.

10          THE WITNESS:   What this is depicting is  
11       the criminal schemes of pill mills in Florida, and  
12       where those that were complicit in that criminal  
13       scheme would -- would take those, you know, out of  
14       Florida and into other locations throughout the  
15       United States.

16       BY MR. HAWAL:

17          Q       And sell them in communities in Georgia,  
18       Tennessee, Kentucky, Ohio, and Missouri?

19          A       That could be.

20          Q       And I take it this was based upon  
21       information that you either researched or had  
22       knowledge about?

23                   MR. STANNER:   Objection to form.  
24       Foundation.

1 THE WITNESS: It is.

2 (Plaintiffs' Exhibit No. 29 was  
3 marked for identification.)

4 BY MR. HAWAL:

5 Q The last exhibit I'm going to have  
6 marked and ask you about is Exhibit No. 29.

7 And although it is an Insys document and  
8 the Bates number is INSYS\_MDL006972647, it is a  
9 communication from John Bonner, director of  
10 Product Management, Branded Rx, at McKesson Drug  
11 in San Francisco.

12 Do you know John Bonner?

13 A I -- I do not.

14 Q In any event, Mr. Bonner apparently,  
15 according to the first sentence of his e-mail,  
16 says: "The enemy here is the DEA." You see that?

17 A I do.

18 Q And do you believe that certain  
19 pharmaceutical -- or pharmaceutical distributors  
20 of opioid drugs consider the DEA the enemy?

21 MR. STANNER: Objection to form.  
22 Objection to foundation as to this exhibit.

23 THE WITNESS: Can I just take a minute  
24 and finish reading it?

1 BY MR. HAWAL:

2 Q Sure.

3 A (Peruses document.)

4 Q Have you read it?

5 A I have.

6 Q Does it trouble you as a former DEA  
7 agent that certain employees of McKesson -- or at  
8 least this employee of McKesson considers DEA the  
9 enemy?

10 MR. STANNER: Objection to the form.

11 THE WITNESS: It does.

12 BY MR. HAWAL:

13 Q Has that been some experience that  
14 you've come to understand, that certain  
15 manufacturers and distributors have considered the  
16 DEA the enemy because of administrative  
17 proceedings that the DEA has decided -- and the  
18 Department of Justice has decided to bring for  
19 violations of the Controlled Substances Act?

20 MR. STANNER: Object to the form of the  
21 question.

22 MR. SATIN: Objection. Pursuant to  
23 Touhy, don't answer that question to the extent it  
24 would disclose information you obtained while at

1     DEA.

2                   THE WITNESS:   This is -- since I've been  
3     at McKesson, this is the first time I've seen  
4     anything like -- like this.

5     BY MR. HAWAL:

6                 Q     Are you aware, sir, that McKesson and  
7     other opioid distributors, including their trade  
8     association HDMA, have donated funds for lobbying  
9     efforts to change the laws that allow the DEA and  
10    the Department of Justice to bring enforcement  
11    actions against companies that are wholesalers?

12                   MR. STANNER:   Object to the form of the  
13    question.

14                   MR. SATIN:   Objection pursuant to Touhy  
15    to the extent your answer would reveal such  
16    information from your time at DEA.

17                   THE WITNESS:   Since my time at McKesson,  
18    I'm not aware of that.

19     BY MR. HAWAL:

20                 Q     You're aware that a congressman in  
21    Pennsylvania has sponsored legislation through  
22    Congress that has changed the enforcement  
23    responsibilities of the DEA and the Department of  
24    Justice as it relates to wholesalers?

1 MR. STANNER: Object to the form.

2 BY MR. HAWAL:

3 Q Marino. Tom Marino.

4 MR. STANNER: Same objection.

5 THE WITNESS: I'm aware --

6 MR. SATIN: Same objection with respect  
7 to Touhy.

8 THE WITNESS: I'm aware of that  
9 legislation. I'm not agree -- I'm not sure I  
10 would agree with the characterization that you  
11 framed it out.

12 BY MR. HAWAL:

13 Q Well, it's legislation that was passed  
14 in 2016, correct?

15 A That's correct.

16 Q Do you know how much money McKesson has  
17 contributed to lobbying efforts with Congressman  
18 Marino and other congressmen to facilitate the  
19 passage of that legislation?

20 MR. STANNER: Object to the form.

21 THE WITNESS: I do not.

22 MR. HAWAL: Okay. That's all the  
23 questions I have.

24 MR. RAFFERTY: Not for the plaintiffs,

1     though.

2                   MR. STANNER:   Understood.

3                   MR. RAFFERTY:   Let's take a ten-minute  
4     break and will swap out some stuff.

5                   MR. STANNER:   That will be fine.

6                   THE VIDEOGRAPHER:   The time is 3:31 p.m.  
7     We're going off the record.

8                   (Recess.)

9                   THE VIDEOGRAPHER:   The time is 3:49 p.m.  
10    We're back on the record.

11                                   DIRECT EXAMINATION

12    BY MR. RAFFERTY:

13               Q     Mr. Boggs, good afternoon.   My name is  
14    Troy Rafferty.   I'm representing the plaintiffs in  
15    this case along with Mr. Hawal.   I'm going to ask  
16    you some additional questions here for a bit,  
17    okay?

18               A     Sure.

19               Q     Okay.   And if I talk over you, I  
20    certainly don't mean to.   I know we're under time  
21    crunches, and I'm going to do my best not to do  
22    that, but if I do, I apologize, and I don't mean  
23    to, and just point it out to me, or your counsel  
24    will point it out to me.   Okay?

1 A Sure.

2 Q You were just being asked some questions  
3 about a bill that was passed in 2016 by Mr. Hawal.  
4 Are you familiar with that?

5 A I am.

6 Q In fact, you have been of the opinion  
7 for several years, dating back even to your time  
8 at the DEA, that the distributors of opioids and  
9 narcotics had basically blown off the DEA.  
10 Correct?

11 MR. STANNER: Objection to form.

12 THE WITNESS: I don't know if I would  
13 necessarily characterize it that in its entirety.

14 BY MR. RAFFERTY:

15 Q Well, how would you -- do you believe as  
16 we sit here today that leading up to your  
17 employment at McKesson that the distributors had  
18 blown off the DEA?

19 MR. SATIN: Objection pursuant to Touhy.  
20 Don't ask that -- don't answer that if it's going  
21 to reveal information you learned while at the  
22 DEA.

23 THE WITNESS: I don't believe I can  
24 answer the question at this time.

1 BY MR. RAFFERTY:

2 Q All right. Well, let me -- let me show  
3 you what we're marking as Exhibit 30.

4 (Plaintiffs' Exhibit No. 30 was  
5 marked for identification.)

6 MR. STANNER: Thank you.

7 BY MR. RAFFERTY:

8 Q Two -- 1.2033. And this is  
9 Bates-numbered MCKMDL00661483.

10 I'm going to direct your attention to  
11 the middle e-mail. That's the one I'm going to  
12 ask you about, Mr. Boggs.

13 Do you know who Ann Berkey is?

14 A She used to be employed by McKesson. I  
15 don't believe she's any longer employed by  
16 McKesson.

17 Q You had conversations with her in the  
18 past about your time at the DEA and your  
19 impressions of the -- of the interaction between  
20 the distributors and DEA, correct?

21 A I don't know that I had multiple  
22 conversations with her. I -- I recall a  
23 conversation.

24 Q Okay. Well, let's take a look at what

1 Ms. Berkey says here in this e-mail dated April 8,  
2 2014. You were at -- at McKesson at that time,  
3 correct?

4 A I was.

5 Q And here it says -- she's sending it to  
6 several people, and she says: "A couple of  
7 updates since my message yesterday on this. I met  
8 today with Gary Boggs, the new senior director of  
9 Regulatory Affairs for U.S. pharma for the East,  
10 of the Mississippi River that is, who is based in  
11 Livonia. He is a former top official with the  
12 DEA, and we talked extensively about this bill,  
13 the hearing, ways we can work with the Agency, et  
14 cetera. He outlined in some detail the processes  
15 that DEA has had in place for years to collaborate  
16 with wholesalers and the way in which our  
17 industry, CAH especially, has blown them off, to  
18 the point that the DEA is now hammering all of  
19 us."

20 Do you see that?

21 A I do.

22 Q Do you recall that conversation with  
23 Ms. Berkey?

24 MR. STANNER: Object to the form.

1 THE WITNESS: Just in general, yes.

2 BY MR. RAFFERTY:

3 Q In general? Do you recall making that  
4 statement?

5 A I don't believe that's a quote.

6 MR. STANNER: Objection to the form.

7 BY MR. RAFFERTY:

8 Q I didn't ask if it was a quote. I asked  
9 if you made a statement or a statement similar to  
10 that.

11 MR. STANNER: No, objection to the form.  
12 That wasn't what you asked.

13 THE WITNESS: Not that --

14 BY MR. RAFFERTY:

15 Q That's what I'm asking now.

16 A Not that I recall in that context. We  
17 discussed the situation, we discussed different  
18 things about that and --

19 Q Well, "CAH especially," that's Cardinal  
20 Health, correct?

21 A That's correct.

22 Q Okay. And a distributor of narcotics  
23 just like McKesson, right?

24 A That's correct.

1           Q     Okay. And, in fact, it says here that  
2     you outlined in some detail the processes that the  
3     DEA has had in place for years to collaborate with  
4     wholesalers. Do you see that?

5           A     I do.

6           Q     "And in which the industry has blown  
7     them off to the point that the DEA is not  
8     hammering all of us."

9                     So at least with McKesson in 2014, you  
10    were okay discussing all of the information you  
11    had at the time relating to your period -- your  
12    work at the DEA. Right?

13                    MR. STANNER: Objection to the form.

14                    MR. SATIN: And to the suggestion that  
15    it's his decision not to speak about these issues  
16    right now, that is not up to him.

17                    MR. RAFFERTY: That's -- just object.  
18    That's all.

19    BY MR. RAFFERTY:

20           Q     So you were -- at least in 2014, you  
21    were sharing information from your time at DEA  
22    with employees of McKesson. True?

23           A     In -- in generalities, yes.

24           Q     Okay. Including how -- how the DEA had

1 processes in place to collaborate with the  
2 wholesalers, correct?

3 A That's correct.

4 Q Okay. And while you were at the DEA,  
5 what processes were in place for you to  
6 collaborate with wholesalers?

7 MR. SATIN: Objection. Pursuant to  
8 Touhy, don't answer that question.

9 BY MR. RAFFERTY:

10 Q All right. Are you familiar with DU45  
11 reports, Mr. Boggs?

12 A Yes, a little bit. Yes.

13 Q And you are familiar -- I think you said  
14 you went back and looked at the different -- the  
15 different monitoring programs that were in place  
16 at McKesson over the years, correct?

17 A I -- I have looked at them, yes.

18 Q Okay. And are you familiar with  
19 Section 55, Controlled Substances of the -- of the  
20 drug operations manual?

21 A Section 55 is part of McKesson's  
22 operating manual. Yes.

23 Q Correct. And, in fact, it was  
24 Section 55 -- let me show you what we're marking

1 as Exhibit 31. It's going to be a lot later --  
2 lot lighter trip home for me.

3 (Plaintiffs' Exhibit No. 31 was  
4 marked for identification.)

5 BY MR. RAFFERTY:

6 Q So it is 1.1555.

7 MR. STANNER: This is Boggs 31?

8 MR. RAFFERTY: Boggs 31, yes, sir.

9 BY MR. RAFFERTY:

10 Q Do you recognize this as Section 55,  
11 Mr. Boggs? Do you see at the top it says "55 -  
12 Controlled Substances"?

13 A Yes. I do.

14 Q And it's dated July 2000. Do you see  
15 that?

16 A I do.

17 Q And if you look at it, it says in that  
18 first paragraph there, it says -- well, under  
19 number 1, it says "Federal Regulatory  
20 Requirements," and then it's got, "A. General."  
21 Do you see that?

22 A I do.

23 Q Okay. And I'm not going to ask you  
24 about everything in here. Just a couple of

1 sections about it. Okay?

2 And are you aware that the DU45 reports  
3 were mandated to be generated pursuant to this  
4 section?

5 MR. STANNER: Objection to form.

6 THE WITNESS: I -- this was 13 years  
7 before I came to McKesson. I don't know what it  
8 was man- -- if it was -- what was mandated.

9 BY MR. RAFFERTY:

10 Q Well, but you reviewed it, you said,  
11 right?

12 A Only cursory. I haven't -- this is --  
13 this is not in place since I came to McKesson.

14 Q Were you -- were you familiar with DU45  
15 reports while you were at the DEA?

16 MR. SATIN: Objection pursuant to Touhy.  
17 Don't answer that if it would reveal information  
18 you learned while at the DEA.

19 THE WITNESS: I don't believe I can  
20 answer that question at this time.

21 BY MR. RAFFERTY:

22 Q Okay. Are you -- okay.

23 Let's go ahead and just turn the page.  
24 It should be at .29. Down at the bottom, it

1      should say at some point 1.555.29.

2                   MR. STANNER:   Sorry, at the top right of  
3      our documents.

4                   MR. RAFFERTY:   Top right, yes.   I'm  
5      sorry.   Mine is at the bottom.

6                   THE WITNESS:   What would -- what's the  
7      number again?

8      BY MR. RAFFERTY:

9           Q       29.

10          A       Okay.

11                  MR. STANNER:   555.29.

12                  THE WITNESS:   Okay.

13      BY MR. RAFFERTY:

14           Q       And here under Section c, it says:

15      "Daily Controlled Substance Suspicious Order  
16      Warning Report."   Do you see that?

17          A       I do.

18           Q       And then it's got DU45L500.   Do you see  
19      that?

20          A       I do.

21           Q       And it goes on and says:   "When an order  
22      is entered through the central system, controlled  
23      substance items are extracted (after passing  
24      through front end order processing) and compared

1 to in a subroutine to the purchases month-to-date  
2 by customer/customer average purchases, average  
3 purchases by customer class and product."

4 Did I read that correctly, sir?

5 A I did.

6 Q Okay. And if you go down to the next  
7 paragraph, it says: "The same factors that are  
8 used for the Customer Recap Variance," and then  
9 it's got a lot of other things listed here, "are  
10 also used for the Daily Controlled Substance  
11 Suspicious Order Warning Report (three times  
12 monthly average for Schedule II and III  
13 reportables and eight times monthly averages for  
14 IIIN-V."

15 Do you see that?

16 A I do.

17 Q Do you recall when you were at McKesson  
18 and went back and reviewed this that you were --  
19 that that was what a DU45 report was, was if there  
20 was a sale three times the monthly average for a  
21 Schedule II or III narcotic, that it would make it  
22 to the DU45 report?

23 A I did not go back and review it.

24 Q Okay. If we go back -- if we go to the

1 next page, it says: "Monthly Controlled Substance  
2 Suspicious Purchase Report. At the end of the  
3 month (first workday of following month), you will  
4 received the Monthly Controlled Substance  
5 Suspicious Purchases Report."

6 Do you see that? And they refer to it  
7 as suspicious purchases report, right?

8 A I do.

9 Q And have you heard the DU45 referred to  
10 as excessive purchase reports?

11 MR. STANNER: Objection to form.

12 THE WITNESS: I have.

13 BY MR. RAFFERTY:

14 Q Okay. Because that's really what they  
15 are, right? It's just if somebody's got some --  
16 it's just a -- if they order three -- over three  
17 times what their monthly average is, then it's an  
18 excess purchase, and it gets put on the DU45  
19 report, correct?

20 MR. STANNER: Object to the form.

21 MR. SATIN: And objection pursuant to  
22 Touhy. Only answer that question if it won't  
23 reveal information you learned while at DEA.

24 THE WITNESS: It doesn't mean it isn't a

1 suspicious order report.

2 BY MR. RAFFERTY:

3 Q I didn't -- I'm not asking that.

4 I'm asking, is that how -- is that what  
5 it gets us to is an excessive purchase is three  
6 times over the monthly average?

7 MR. STANNER: Objection to form,  
8 speculation.

9 THE WITNESS: Based on what the criteria  
10 established in here is, yes.

11 BY MR. RAFFERTY:

12 Q And is it your -- was it your under- --  
13 is it your understanding that these DU45s were  
14 actually suspicious -- were suspicious order  
15 reports?

16 MR. STANNER: Objection to form.

17 THE WITNESS: It's my understanding  
18 that's what McKesson was submitting, yes,  
19 suspicious order reports.

20 BY MR. RAFFERTY:

21 Q And that was the DU45?

22 A Yes.

23 Q Okay. In fact, if you keep going down,  
24 and you go to the following page, .31. "Customer

1 orders," it says at the top -- I'm sorry, about  
2 the fourth line: "Customer orders for items that  
3 exceed the three times/eight times monthly average  
4 will print as a suspicious order on the report."

5 Do you see that?

6 A I do.

7 Q All right. So -- and then essentially,  
8 based on this, the report would be generated, but  
9 there would be no omit or stop of that order, nor  
10 would there be any due diligence done in response  
11 to those, correct?

12 MR. STANNER: Objection. Form,  
13 speculation.

14 THE WITNESS: I don't know if there was  
15 or wasn't. I don't know that.

16 BY MR. RAFFERTY:

17 Q And you don't recall that as we sit here  
18 today?

19 A Recall what?

20 Q Whether or not there -- the fact that  
21 these were not blocked orders and they were not --  
22 and they were not -- there was no due diligence  
23 done in regards to those orders.

24 MR. STANNER: Same objection.

1                   THE WITNESS: This was 13 years before I  
2   ever was employed by McKesson. I don't know if  
3   they blocked them or -- or did due diligence at  
4   that time frame or not.

5   BY MR. RAFFERTY:

6                   Q     Did you become familiar with what the --  
7   what the process involved in generating and  
8   submitting the DU45 reports to the DEA was while  
9   you were at the DEA?

10                  MR. STANNER: Objection -- objection to  
11   the form.

12                  MR. SATIN: And objection pursuant to  
13   Touhy.

14                  THE WITNESS: I don't believe I can  
15   answer that question at this time.

16   BY MR. RAFFERTY:

17                  Q     Did you -- did you review DU45 reports  
18   from McKesson or other distributors while you were  
19   at the DEA?

20                  A     I don't believe I can answer that  
21   question at this time pursuant to Touhy.

22                  Q     All right. Well, let's take a look.

23                             Do you know whether or not DU45 reports  
24   are still submitted to the DEA?

1           A       I haven't been at DEA for six years. I  
2   have no idea.

3           Q       Well, do you know if McKesson still  
4   submits DU45 reports to the DEA?

5           A       We submit suspicious order reports to  
6   the DEA, and we submit ARCOS reports to the DEA.  
7   That's what we submit.

8           Q       That's not my question. Do you submit  
9   reports that are known as DU45 reports to the DEA?

10           MR. STANNER: Objection. Vague, "you."

11           THE WITNESS: No.

12   BY MR. RAFFERTY:

13           Q       Does McKesson --

14           A       Not in the context of a DU45, no.

15           Q       Okay. I'm going to hand you what we're  
16   marking as exhibit -- I think we're at 33, right?  
17   I hope so because that's the next one I got.

18           MR. STANNER: I had this as 31.

19           MS. MONAGHAN: Yeah, we're on 32.

20           MR. RAFFERTY: We're on 32?

21           (A discussion was held off the record.)

22           MR. RAFFERTY: Go off the record for  
23   just one second.

24           THE VIDEOGRAPHER: The time is 4:02 p.m.

1 We're going off the record.

2 (A discussion was held off the record.)

3 THE VIDEOGRAPHER: The time is 4:02 p.m.

4 We're back on the record.

5 (Plaintiffs' Exhibit No. 32 was  
6 marked for identification.)

7 BY MR. RAFFERTY:

8 Q All right. I've just handed your  
9 counsel what we've marked as Exhibit 32,  
10 Mr. Boggs. And it is 1.2100.

11 So have you ever seen -- this, I'm going  
12 to represent to you, was produced to us as an  
13 example of a DU45 report that was submitted by  
14 McKesson to the DEA.

15 Are you familiar -- have you seen any  
16 type of document like that?

17 A I have not seen it, no.

18 Q Could you hold it up for the camera just  
19 so -- because I'm going to represent to you that  
20 that is two-sided, it's printed on both sides, and  
21 it's approximately 600 pages long.

22 And if we look at it, it says -- it's  
23 dated 4/3/2007, and it says "DU45J6B, Monthly  
24 Controlled Substance Report."

1 Do you see that?

2 A I do.

3 Q And then if you go to the following  
4 page, .2, just turn that one over.

5 All right. And if we go -- and we look  
6 at here, it says -- this is for the Distribution  
7 Center 165 in Oklahoma City.

8 Do you see that up in the right corner?

9 A I do.

10 Q Okay. And here it says: "We are  
11 sending a copy of the Monthly Controlled Substance  
12 Suspicious Purchase Report for March '07. This  
13 report reflects purchases from customers for  
14 Schedules II through V controlled substances which  
15 exceed the item monthly average for the class of  
16 trade. A listing of the parameters used are  
17 available upon request."

18 And then if you look, for example, right  
19 below that, it's got "Selling Description:  
20 Fentanyl patch," and it's got the order  
21 quantities, which would be at the end there, 20,  
22 20, and 20, which totals a total of 60 orders.

23 Do you see that?

24 A I do.

1           Q     And it says the item monthly average was  
2     five. And if you look at the factor, that's three  
3     or three times, which is what we saw was in the --  
4     the Section 55, correct?

5           A     I do.

6           Q     And that means the item limit is 15, and  
7     they were ordering 60. And that's presumably why  
8     they made this report, correct?

9           MR. STANNER: Objection to form.

10          THE WITNESS: That's correct.

11     BY MR. RAFFERTY:

12          Q     Then if you go -- I mean it goes on for  
13     page after page after page of different opioids  
14     and narcotics and their doses, and whether or not  
15     the met or exceeded that, and it goes on for  
16     approximately 600 pages. Correct?

17          A     That's correct.

18          Q     In fact, you're aware that the DEA made  
19     clear to all of the distributors that simply  
20     submitting these excess purchase orders reports  
21     did not satisfy the distributors' duties and  
22     obligations under the Controlled Substances Act,  
23     correct?

24          MR. SATIN: Objection pursuant to Touhy.

1 Don't answer if it's going to reveal any  
2 information from your time at DEA.

3 THE WITNESS: I don't believe I can  
4 answer that question right at this time.

5 BY MR. RAFFERTY:

6 Q Okay. In fact, if we look at what I'm  
7 going to mark as exhibit -- I just found 32.  
8 Okay.

9 MR. RAFFERTY: Well, too late now.

10 BY MR. RAFFERTY:

11 Q So Exhibit 33 -- all right. So I'm  
12 marking as Exhibit 33 -- that's why I don't  
13 pre-mark exhibits.

14 (Plaintiffs' Exhibit No. 33 was  
15 marked for identification.)

16 BY MR. RAFFERTY:

17 Q What years were you work -- working at  
18 the -- in the diversion -- or at the DEA in  
19 regards to diversion?

20 MR. STANNER: Objection. Form.

21 THE WITNESS: I started in January of  
22 2006, and I retired from that position and the  
23 Agency at the end of June of 2012.

24 BY MR. RAFFERTY:

1 Q And then started with McKesson in 2013?

2 A Almost the end of 2013, yes.

3 Q Okay. So here, looking at this  
4 particular -- it's 1823. Here it says: "Summary  
5 of DEA-HDMA meeting on suspicious orders. Meeting  
6 date, September 7th, 2007."

7 And it's got the different attendees of  
8 the HDMA, and then the DEA. Mark Caverly, Kathy  
9 Gallagher, Mike Mapes and Lisa Sullivan. Do you  
10 know who those are?

11 A I do.

12 Q Okay. You worked with them at the DEA?

13 A I did.

14 Q And here if you go down below, it says:  
15 "He noted" -- in that first full paragraph in the  
16 summary: "He noted that DEA had met with  
17 approximately 15 to 20 wholesale distributors one  
18 on one." Do you see that?

19 A I do.

20 Q Did you meet with any of the wholesalers  
21 one on one during the September 2007 time period?

22 MR. SATIN: Objection pursuant to Touhy.

23 THE WITNESS: I don't believe I can  
24 answer that question at this time.

1 BY MR. RAFFERTY:

2 Q And it goes down and says: "DEA's key  
3 takeaways from the meeting were," and it says:  
4 "DEA's policy was to expect more than just  
5 reporting suspicious orders. If there was a  
6 suspicious order, the distributor should either  
7 stop the delivery or should evaluate the customer  
8 further before delivering it."

9 Do you see that?

10 A I do.

11 Q That means that there should be due  
12 diligence. You would agree with that, right?

13 MR. STANNER: Objection to form.  
14 Misstates.

15 THE WITNESS: I think that that's the  
16 general concept of that, yes.

17 BY MR. RAFFERTY:

18 Q Okay. "Simply complying with the  
19 suspicious orders regulatory requirement does not  
20 mean in the Agency's view that the registrant is  
21 maintaining an effective program to detect and  
22 prevent diversion."

23 Do you see that?

24 A I do.

1 Q You would agree with that, wouldn't you?

2 MR. STANNER: Objection to form.

3 BY MR. RAFFERTY:

4 Q That just reporting a suspicious order  
5 does not equate to maintaining an effective  
6 program and detect and prevent diversion?

7 A I agree.

8 MR. STANNER: Objection to form.

9 BY MR. RAFFERTY:

10 Q "In fact, DEA indicated that they did  
11 not have resources to inspect every pharmacy."

12 You would agree with that, wouldn't you?

13 MR. STANNER: Objection to form.

14 MR. SATIN: Are you asking about his  
15 present views or back then?

16 BY MR. RAFFERTY:

17 Q You would agree with that today,  
18 wouldn't you?

19 MR. STANNER: Objection to form. Calls  
20 for speculation.

21 THE WITNESS: I -- I don't know how many  
22 resources they have at this point in time.

23 BY MR. RAFFERTY:

24 Q Okay. What about when you were at the

1     DEA, did you agree that DEA did not have the  
2     resources to inspect every pharmacy?

3                   MR. SATIN:  Objection pursuant to Touhy.

4                   THE WITNESS:  I don't think I can answer  
5     that question at this time.

6     BY MR. RAFFERTY:

7           Q     Okay.  Do you agree that it was -- it's  
8     important for the distributor to, quote, know  
9     their customers, end quote?

10                  MR. SATIN:  Are you asking about right  
11    now?

12                  MR. RAFFERTY:  Today.

13                  THE WITNESS:  I think that that part --  
14    that's due diligence.

15    BY MR. RAFFERTY:

16           Q     Okay.  And then we go over to the next  
17    page, and it says:  "DEA also does not want to  
18    receive suspicious order reports that merely  
19    reflect volumes that went over a threshold.  They  
20    wanted reports that are true suspicious orders.  
21    Similarly, they do not want to receive what they  
22    called excessive purchase reports which had been  
23    used in the past."

24                  Do you see that?

1           A       I do.

2           Q       And -- and that would be similar to what  
3       we just looked at, the DU45, right? That's a  
4       report that just lists sales that exceeded a  
5       particular threshold.

6                   MR. STANNER: Objection to form.

7       BY MR. RAFFERTY:

8           Q       Right?

9           A       Which would be indicative of an order of  
10       unusual size.

11          Q       I'm not asking that. When they say that  
12       they do not want to receive what they called  
13       excessive purchase reports, that's what the DU45  
14       was we just looked at, right?

15                  MR. STANNER: Objection to form.

16                  THE WITNESS: Right, but that doesn't  
17       mean it's not a suspicious order report.

18                  MR. RAFFERTY: I -- move to strike  
19       everything after -- after "right."

20       BY MR. RAFFERTY:

21          Q       Okay. Now, it also says: "DEA also  
22       indicated that they were not going to make a  
23       decision for the wholesale distributors as to when  
24       an order was suspicious. They feel this is up to

1 the distributor."

2 Would you agree with that today that  
3 that's the way it should work?

4 A The regulation requires us to design and  
5 operate a system to identify suspicious orders and  
6 report those to the DEA.

7 Q And you would agree that simply -- for  
8 example, today, if you were just submitting this  
9 report that showed that sales went over a  
10 particular threshold and nothing more, and no due  
11 diligence was done and there were no omit reports  
12 or no blocked orders, that wouldn't be satisfying  
13 your obligations under the Controlled Substances  
14 Act, correct?

15 MR. STANNER: Object to the form.

16 THE WITNESS: It depends on which  
17 obligation you're referring to.

18 BY MR. RAFFERTY:

19 Q The obligation to effect -- to maintain  
20 effective controls against diversion.

21 MR. STANNER: Same objection.

22 THE WITNESS: I would agree with that  
23 statement, yes.

24 BY MR. RAFFERTY:

1           Q     Okay. And do you know -- and here in  
2     this particular document, the DEA is specifically  
3     informing the -- the manufacturers in 2007 that  
4     this is not -- the distributors, I'm sorry -- the  
5     distributors that that is not adequate to meet  
6     your -- meet McKesson's obligations under the  
7     Controlled Substances Act. True?

8                   MR. STANNER: Object -- objection to the  
9     form. Are you referring to this document, meaning  
10    Exhibit 33, this DEA --

11                  MR. RAFFERTY: Yes.

12                  MR. STANNER: Object to the form.

13                  MR. SATIN: Are you asking what the  
14    document says or what his belief is as to what DEA  
15    believed?

16    BY MR. RAFFERTY:

17           Q     That's what -- that's what the document  
18    says, first of all, right?

19           A     That's what the document says, yes.

20           Q     Okay. And did you agree with that and  
21    would you agree with that back when you were at  
22    the DEA?

23                  MR. SATIN: Objection pursuant to Touhy.

24                  THE WITNESS: I don't think I can answer

1     that question at this time.

2     BY MR. RAFFERTY:

3             Q     Now, you -- you agree with me that not  
4     only must -- speaking of today, while you're here  
5     at -- since you've been at McKesson, you would  
6     agree that you have an obligation not to just  
7     report but also to block suspicious orders --

8             MR. STANNER:   Object --

9     BY MR. RAFFERTY:

10            Q     -- and then perform due diligence on  
11     those to determine whether or not they're likely  
12     to be diverted to illegal uses, correct?

13            MR. STANNER:   Objection to the form on  
14     several bases.   I'll save you the time unless you  
15     want them.

16            MR. RAFFERTY:   That's okay.

17            THE WITNESS:   A regulatory obligation?

18     BY MR. RAFFERTY:

19            Q     Yes.

20            A     No, I don't agree with that at all.

21            Q     You don't agree with that.

22            A     I don't know anywhere in the regulation  
23     that that's a requirement.

24            Q     Did you believe that when you were at

1 the DEA?

2 MR. SATIN: Objection pursuant to Touhy.

3 THE WITNESS: I don't believe I can  
4 answer that question at this time.

5 BY MR. RAFFERTY:

6 Q In fact, let's go ahead and mark this as  
7 Exhibit 34, 1946.

8 (Plaintiffs' Exhibit No. 34 was  
9 marked for identification.)

10 BY MR. RAFFERTY:

11 Q This is a -- this is a document,  
12 Mr. Boggs, dated September 1 -- well, it's  
13 actually dated October 20, 2005 up in the top  
14 right corner, but it's referencing a presentation  
15 on September 1st, 2005.

16 Do you see that?

17 A I do.

18 Q Okay. And then it says: "Internet  
19 presentation with McKesson Corp on September 1,  
20 2005."

21 Were you aware that this was -- that  
22 these types of meetings were taking place or had  
23 taken place --

24 MR. SATIN: Objection pursuant to Touhy.

1 BY MR. RAFFERTY:

2 Q -- with McKesson and the DEA during this  
3 time period?

4 MR. SATIN: Objection pursuant to Touhy.

5 THE WITNESS: I was not in the diversion  
6 program at this time.

7 BY MR. RAFFERTY:

8 Q Did you become aware while you were at  
9 the DEA that these meetings were taking place?

10 MR. SATIN: Objection pursuant to Touhy.

11 THE WITNESS: During the time frame of  
12 this -- this memorandum, I was not in -- in the  
13 diversion program, so I didn't -- I wasn't aware  
14 of this.

15 BY MR. RAFFERTY:

16 Q It says here that the -- it looks at --  
17 it's to Joseph Rannazzisi from Michael Mapes.

18 I believe you said you knew Michael  
19 Mapes?

20 A I do.

21 Q Okay. And it says here that Michael  
22 Mapes -- "The purpose of the meeting was to  
23 address the illegal domestic internet pharmacy  
24 problem and their source of supply."

1 Do you see that?

2 A I do.

3 Q Okay. And then if we turn this -- so  
4 this is a memo, and it says -- I'm sorry, before  
5 we turn, it says: "Mr. Mapes opened the meeting  
6 by presenting to the representatives of McKesson  
7 Corp a PowerPoint briefing which explained the  
8 common characteristics of internet pharmacies and  
9 why their activities are illegal."

10 Do you see that?

11 A I do.

12 Q Okay. And then it says at the bottom:  
13 "Mr. Mapes finalized the presentation by advising  
14 the representatives of McKesson Corp that they  
15 needed to thoroughly review the materials which  
16 had been presented to them and review in-depth the  
17 purchasing patterns and quantities of their  
18 customers. Representatives of McKesson Corp  
19 acknowledged understanding of the materials."

20 Do you see that?

21 A I do.

22 Q Okay. Then if we turn to page .3, which  
23 is the start of the actual PowerPoint, and it says  
24 "Meeting with McKesson Corp, DEA Headquarters,

1     September 1, 2005."   Do you see that?

2             A       I do.

3             Q       And then if we go to page .9 of this  
4     presentation.   At the bottom slide, it says  
5     specifically -- sorry, let me know when you get  
6     there, sir.

7                    Okay?

8             A       Okay.

9             Q       It says:  "Suspicious orders," and it's  
10    got:  "21 CFR 1301.74 requires that registrants  
11    design and operate system to identify suspicious  
12    orders."  And then it says:  "Report suspicious  
13    orders to DEA when discovered."

14                   Correct?

15            A       That's what it says, yes.

16            Q       And you know today in your work with  
17    McKesson that that's a requirement and has been a  
18    requirement of the Controlled Substances Act since  
19    its passage, correct?

20            A       That's correct.

21            Q       Okay.  And then if we turn to the next  
22    page, it says:  "Suspicious Orders.  Reporting a  
23    suspicious order to DEA does NOT," and it's got  
24    "not" in all capitals, "relieve the distributor of

1 the responsibility to maintain effective controls  
2 against diversion -- diversion."

3 Do you see that?

4 A I do.

5 Q Okay. And you know that as -- as of  
6 today that's true, correct?

7 MR. STANNER: Objection to form.

8 BY MR. RAFFERTY:

9 Q That simply reporting a suspicious order  
10 does not relieve the distributor of its  
11 responsibility to maintain effective controls  
12 against diversion.

13 MR. STANNER: Object to the form.

14 THE WITNESS: I do.

15 BY MR. RAFFERTY:

16 Q Okay. And then if we go down, it says:  
17 "Suspicious Orders. DEA cannot tell a distributor  
18 if an order is legitimate or not. The distributor  
19 must determine which orders are suspicious and  
20 make a sales decision."

21 Do you see that?

22 A I do.

23 Q And do you agree with that today?

24 A I -- I agree that that's an option that

1 the distributors have, yes.

2 Q Okay. And so in two thousand -- as far  
3 back as 2005, the DEA had told McKesson, according  
4 to this, what you just read there, that simply  
5 reporting the suspicious order isn't enough; that  
6 McKesson's responsibility is to then perform due  
7 diligence or look into the sale and the customer  
8 and determine whether or not to make the sale or  
9 ship the drug, correct?

10 MR. STANNER: Objection to the form,  
11 misstates.

12 THE WITNESS: That's what it says here.

13 BY MR. RAFFERTY:

14 Q Okay. And in fact, that never changed.  
15 I think Mr. Hawal showed you Mr. Rannazzisi's  
16 letter. Do you recall that?

17 A There were a couple of them. Is there  
18 one in particular that you are referencing?

19 Q 1464.

20 MR. RAFFERTY: Exhibit 1?

21 (Counsel conferring.)

22 THE WITNESS: Exhibit 1?

23 BY MR. RAFFERTY:

24 Q Exhibit 1, yeah.

1                   So -- and this is in 2006. So about a  
2   year after that presentation we just saw, the DEA  
3   was once again -- on page -- I'm sorry, sir,  
4   page 2, .2 -- on page 2 is telling McKesson and  
5   the other distributors: "In addition to reporting  
6   all suspicious orders, a distributor has a  
7   statutory responsibility to exercise due diligence  
8   to avoid filling suspicious orders that might be  
9   diverted into then legitimate, medical  
10   scientific -- into other than legitimate, medical,  
11   scientific and industrial channels."

12                   Do you see that?

13               A     I do.

14               Q     Okay. And Mr. Rannazzisi, you know who  
15   he is, right?

16               A     I do.

17               Q     Did you work with him at the DEA?

18               A     I did.

19               Q     Okay. And here he says: "There is a  
20   statutory responsibility to exercise due diligence  
21   to avoid filling suspicious orders."

22                   When you avoid filling a suspicious  
23   order, that means you block that suspicious order,  
24   correct?

1 MR. SATIN: You're asking him today  
2 about what he believes?

3 MR. RAFFERTY: Today.

4 BY MR. RAFFERTY:

5 Q You understand that's what --

6 MR. STANNER: Objection to form.

7 BY MR. RAFFERTY:

8 Q That's what -- when you avoid filling --  
9 if McKesson avoids filling a suspicious order,  
10 that means they're blocking that order, they're  
11 not shipping it.

12 MR. STANNER: Objection to form.

13 THE WITNESS: I'm not sure I understand  
14 your question. We -- we do block orders.

15 BY MR. RAFFERTY:

16 Q That isn't my question.

17 Here's my question: It says here that:  
18 "There is a statutory responsibility to exercise  
19 due diligence to avoid filling suspicious orders?"

20 Right? That's what it says?

21 A I'm not aware of a statutory or  
22 regulatory obligation to block and not ship an  
23 order. We have -- we have a legal obligation to  
24 maintain effective controls against diversion.

1           Q     And here, Mr. Rannazzisi at the DEA is  
2     saying that you have -- you have a statutory  
3     responsibility to avoid filling suspicious orders.  
4     That's what he's saying, right?

5           A     That's what it says.

6           Q     Okay. And you knew this letter had gone  
7     out to these distributors, correct?

8                     MR. SATIN: Objection pursuant to Touhy.

9                     THE WITNESS: I've seen the letter since  
10    I've been at McKesson.

11    BY MR. RAFFERTY:

12           Q     Had you seen this letter prior to being  
13    at McKesson?

14                     MR. SATIN: Objection pursuant to Touhy.

15                     THE WITNESS: I don't know that I can  
16    answer that question at this time.

17    BY MR. RAFFERTY:

18           Q     All right. Then in 2007 -- if we look  
19    at this, which we will mark as Exhibit 35 --

20                     (Plaintiffs' Exhibit No. 35 was  
21    marked for identification.)

22    BY MR. RAFFERTY:

23           Q     And I'm going to ask you specifically  
24    about one particular portion of this.

1                   Down at the bottom under -- the Gary  
2   Hilliard e-mail dated September 11th, 2007, Do you  
3   see that?

4               A     I do.

5               Q     Okay. And it says: "Don, I am  
6   attaching -- I am attending the DEA pharmaceutical  
7   conference today. Mike Mapes, Chris Zimmerman, VP  
8   Corporate Security and Regulatory Affairs, ABC,  
9   spoke on drug diversion."

10              Do you know ABC is AmerisourceBergen?

11             A     I do.

12             Q     Okay. And then he goes down and says:  
13   "In my opinion, this could be the time bomb you  
14   referenced. ABC's program appears to be more  
15   robust in the following areas. I expect Mapes to  
16   define this as the standard."

17              Then he goes through certain issues  
18   there -- certain characteristics of ABC's policy.  
19   Do you see that?

20             A     I do.

21             Q     And then it says: "Tom" -- I'm sorry.  
22   "Mapes presentation," do you see that down below?

23             A     I do.

24             Q     And it says: "The requirement is to

1 report suspicious orders, not suspicious sales."

2 Do you see that?

3 A I do.

4 Q All right. And then if you go down  
5 further, it says: "Registrants that routinely  
6 report suspicious orders, yet fill these orders  
7 with reason to believe they are destined for the  
8 illicit market" -- and it says "and" but I believe  
9 it's a typo and should be -- "are failing to  
10 maintain effective controls against diversion."

11 Do you see that?

12 MR. STANNER: Objection to form.

13 BY MR. RAFFERTY:

14 Q Do you see that, sir?

15 A I see what it says, yes.

16 Q Okay. And you would agree with me the  
17 sentence doesn't really read right if the word  
18 "and" is there as compared to "are"?

19 A I understand.

20 Q Okay. Well, and you would agree with me  
21 today in your working with McKesson, and you would  
22 agree that registrants like McKesson that  
23 routinely report suspicious orders but fill the  
24 orders with reason to believe that they are

1     destined for the illicit market are in fact  
2     failing to maintain effective controls against  
3     diversion, true?

4                   MR. STANNER:  Objection to the form of  
5     the question.

6                   THE WITNESS:  If they have reason to  
7     believe they're going to be destined, yes.

8     BY MR. RAFFERTY:

9                   Q     "Registrant should make informed  
10    decisions before making the sale."  Do you see  
11    that?

12                  A     I do.

13                  Q     And that would be -- the way you make  
14    informed decisions would be through, for example,  
15    due diligence, right?

16                  A     That's one way, yes.

17                  Q     Okay.  I want to show you now -- and  
18    you -- and you have agreed with me, I believe,  
19    that in fact there's a requirement that suspicious  
20    orders be reported to the DEA, correct?

21                  A     There is a requirement for that, yes.

22                  Q     Okay.  All right.  And it's your belief  
23    that that had been being done at McKesson?

24                  MR. STANNER:  Objection to form.  Vague.

1 MR. RAFFERTY: Sorry, I apologize.

2 BY MR. RAFFERTY:

3 Q And -- well, during your work at  
4 McKesson, you have testified, I believe, that you  
5 have thought that that obligation was being met;  
6 is that true?

7 A Since my -- my time with McKesson, I  
8 believe that that's correct, yes.

9 Q Well, have you gone back and looked at  
10 whether or not that had been being done since  
11 2006?

12 A I did not.

13 Q Okay. In 2006, you would agree that  
14 there was a requirement that suspicious orders be  
15 reported to the DEA, correct?

16 A I would agree with that, yes.

17 Q Okay. I'm handing you what we're  
18 marking as Exhibit 36.

19 (Plaintiffs' Exhibit No. 36 was  
20 marked for identification.)

21 BY MR. RAFFERTY:

22 Q And I'm going to represent the first  
23 page is something that I -- I typed up and  
24 calculated for use of -- in the -- for use in the

1 deposition, because it's a voluminous record there  
2 that I'm attaching.

3 I'm also going to hand you -- while  
4 we're doing it, I might as well give you the next  
5 one too, which is 37.

6 (Plaintiffs' Exhibit No. 37 was  
7 marked for identification.)

8 BY MR. RAFFERTY:

9 Q And 36 -- here, if we look at that, I  
10 will tell you that this was -- this document, the  
11 spreadsheet starting on page 2, was information  
12 produced to us by McKesson as the omit reports  
13 from 2006 forward.

14 Are you familiar with what omit reports  
15 are, sir?

16 A I am.

17 Q Okay. That's when there is a blocked  
18 order and -- because it's -- it's suspicious, and  
19 then -- well, tell me what you understand an omit  
20 report to be.

21 A A suspicious order report.

22 Q Okay. All right. Here, if we look at  
23 starting on page 2, you see the first date at the  
24 top there under "Transaction," it's about four

1 categories over. It's kind of hard to see. You'd  
2 probably see it better up on the screen. It's  
3 pretty small.

4 A I can see it.

5 Q You can see it?

6 A Yes.

7 Q Okay. Transaction -- the first  
8 transaction date reads 5/27/2008. So May 27,  
9 2008. Do you see that?

10 A I do.

11 Q And so this report starts January 1,  
12 2006. But there are no -- according to McKesson's  
13 records, there are no blocked orders from 2000 --  
14 January 1, 2006, until May 26, 2008.

15 MR. STANNER: Objection. Form.

16 BY MR. RAFFERTY:

17 Q Were you aware of that -- are you aware  
18 of that right now as you sit here that for those  
19 two years there were not even any blocked orders?

20 MR. STANNER: Objection to the form,  
21 foundation.

22 THE WITNESS: I was -- I'm not aware of  
23 that.

24 BY MR. RAFFERTY:

1           Q     That would be unusual for two years for  
2     there not to be one single blocked order, wouldn't  
3     it?

4                     MR. STANNER:  Objection to the form.

5                     THE WITNESS:  Not necessarily.  If this  
6     is --

7     BY MR. RAFFERTY:

8           Q     No?

9           A     No, if we're talking about a specific  
10    county, McKesson either -- McKesson may not have  
11    had any customers in there or it may have had only  
12    a few customers, or in those customers that were  
13    there during that time frame may never ordered  
14    anything that was of unusual size, frequency or  
15    pattern.

16          Q     And you don't know that, though, right?

17          A     I don't.  I'm explaining to you why  
18    there couldn't -- might not be without it being  
19    some --

20          Q     Well, let's -- let's take a look at the  
21    data from 5/27/08.  Let's see.  So -- well, hang  
22    on a second before we get to that.

23                     MR. STANNER:  Sorry, can -- can you just  
24    clarify, is Cuyahoga 30 -- 37 or Summit is --

1 MR. RAFFERTY: Cuyahoga is 36.

2 MR. STANNER: Cuyahoga is 36.

3 MR. RAFFERTY: 30 -- no, 30 -- whatever  
4 the first one was I handed you.

5 THE WITNESS: 36 is Cuyahoga.

6 MR. RAFFERTY: Cuyahoga. And Summit is  
7 37.

8 MR. STANNER: And so which one are you  
9 on now?

10 MR. RAFFERTY: Cuyahoga, the first one.

11 MR. STANNER: Got it.

12 BY MR. RAFFERTY:

13 Q So, first, we can agree that, according  
14 to this report, there were no blocked orders from  
15 2006 to 2008, right?

16 MR. STANNER: Objection to the form.

17 BY MR. RAFFERTY:

18 Q As you go into it, you go further in  
19 dates, you go more recent. It doesn't go  
20 backwards.

21 All right. We're on a time crunch.

22 I'll withdraw that question.

23 May 20 -- so May 27, 2008, if you look  
24 at the next section over, it says "DEA reported

1     date."   Do you see that?

2             A     I do.

3             Q     And if you go down that, that's empty,  
4     right?   There's no date given.   Correct?   As you  
5     go down all of these different orders, all of  
6     these omits.   Do you see that?

7             A     I do see that.

8             Q     In fact, if you go -- you can go all the  
9     way to page .9.   And if you go down towards the  
10    middle of the page --

11            MR. STANNER:   So the page -- your page  
12    numbers are cut off on ours.   Can you give -- is  
13    there a Bates or is it all the same?

14            MR. RAFFERTY:   912.   Bates 912.

15            MR. STANNER:   They're all 912.   Sorry.  
16    So -- you just got to give us a different marker.  
17    The first entry on page 9, I believe is --

18            MR. RAFFERTY:   Ride Aid --

19            MR. STANNER:   -- Rite Aid 4788.

20            MR. RAFFERTY:   -- 4788.

21            MR. STANNER:   Yeah.

22    BY MR. RAFFERTY:

23            Q     Okay.   Are you there?

24            A     What was it?

1 MR. STANNER: Rite Aid 4788. You're  
2 right there.

3 BY MR. RAFFERTY:

4 Q And if you look, the first date that is  
5 shown as a reported to the DEA date is August 1st,  
6 2013. Do you see that?

7 A I do.

8 Q That means from May 27th to 2008, to --  
9 from May 27th, 2008, to July 31st, 2013, for -- I  
10 will tell you that there was no reports made to  
11 the DEA of any of those -- of any of those orders,  
12 correct?

13 MR. STANNER: Objection to the form.  
14 Calls for speculation.

15 BY MR. RAFFERTY:

16 Q There's no indication on the  
17 spreadsheet that --

18 A There's no indication on the spreadsheet  
19 that a report wasn't made. I don't know if a  
20 report was or wasn't made.

21 Q So that's five -- almost five years,  
22 correct?

23 MR. STANNER: Same objection.

24 THE WITNESS: Approximately.

1 BY MR. RAFFERTY:

2 Q Five years without a report of a  
3 suspicious order to the DEA. Correct?

4 MR. STANNER: Same objection.

5 THE WITNESS: I think you misunderstood  
6 my testimony. My testimony is, is that the  
7 document doesn't show a date. It doesn't  
8 necessarily mean that a report wasn't made.

9 BY MR. RAFFERTY:

10 Q Do you have any evidence that any  
11 reports were made during that five-year time  
12 period in Cuyahoga County, sir?

13 A I don't --

14 MR. STANNER: Objection. Calls for  
15 speculation.

16 THE WITNESS: I don't.

17 BY MR. RAFFERTY:

18 Q Okay. And in fact, if you add them up,  
19 if you look at the first page of that -- that I  
20 typed up that's not part of the material, I will  
21 represent to you that there were 481 stop orders  
22 between May 27th, 2008, and July 31st, 2013, with  
23 zero reports -- according to this, with zero  
24 reports to the DEA.

1 Do you see that?

2 A I do.

3 Q And if that in fact is true and there  
4 are no reports being made over that five-year  
5 period, that is not meeting McKesson's obligations  
6 for the maintenance of effective controls,  
7 correct?

8 MR. STANNER: Objection to the form of  
9 the question.

10 THE WITNESS: No, actually, if there's  
11 481 stopped orders, that is exactly what that is,  
12 is maintaining effective controls. They didn't  
13 ship the order.

14 BY MR. RAFFERTY:

15 Q Oh, is it your understanding they didn't  
16 ship any of these orders?

17 A That's what it says, "Stopped orders."

18 Q Okay. How long -- you can stop an  
19 order, then -- and then allow a TCR to be done and  
20 ship the order, right?

21 MR. STANNER: Objection to form.

22 THE WITNESS: I don't know if that was  
23 the case or not. I don't know.

24 BY MR. RAFFERTY:

1           Q     You're guessing, because there's no  
2     indication --

3           MR. STANNER:   Counsel, you're asking him  
4     to talk about a document from 2010.   It's all  
5     guessing.   That's -- they're your questions.

6           MR. RAFFERTY:   No, they're not.

7     BY MR. RAFFERTY:

8           Q     In fact, in five years, none of these  
9     omits were reported to the DEA, correct?

10          A     You asked me if we were maintaining  
11     effective controls by this document that you --  
12     you created, and I'm saying that if there was 481  
13     stops, that's exactly maintaining effective  
14     controls against diversion.   They didn't ship  
15     them.

16          Q     They ship them for how long, sir, do you  
17     know?

18          A     All of these orders were not shipped.

19          Q     Ever?   Is that your understanding?

20          MR. STANNER:   Objection to the form of  
21     the question.

22          THE WITNESS:   I'm reading the report  
23     that you gave me on Exhibit 36, and from my  
24     reading of that, none of these orders were

1 shipped.

2 BY MR. RAFFERTY:

3 Q Okay. But you don't know that, do you?

4 MR. STANNER: Same objection.

5 BY MR. RAFFERTY:

6 Q In fact, you can block an order and then  
7 unblock it. Under the processes even today at  
8 McKesson, you can do that, right?

9 MR. STANNER: Same objection.

10 THE WITNESS: That's an option, yes.

11 BY MR. RAFFERTY:

12 Q Okay. And so here we know that you also  
13 always had the obligation, McKesson did, to report  
14 suspicious orders, correct?

15 A That's correct.

16 Q Okay. And we know for five years,  
17 according to this report, that none of these  
18 orders were actually reported to the DEA, correct?

19 A According to this report, yes.

20 Q Okay. And in fact, if we go to Summit  
21 County, and we look at this in the same light,  
22 which is Exhibit 37, and we look at this, once  
23 again we're looking at the top of page 2, the  
24 first date is June 18th, 2018 -- I'm sorry,

1 June -- yeah, June 18th, 2008.

2 Do you see that?

3 A I do.

4 Q Okay. Nothing before that. That's the  
5 first entry on this spreadsheet, correct?

6 A That's correct.

7 Q And then if we go and we turn to  
8 page .10, which is the first page where the DEA  
9 report dates begin -- do you see that, the first  
10 date of -- any order being reported to the DEA,  
11 according to this spreadsheet, is August 1st,  
12 2013, right?

13 A I do -- I see that, yes.

14 Q So almost the same exact time period  
15 where no reports were being made to the DEA as it  
16 was in Cuyahoga County, right?

17 MR. STANNER: Objection to the form of  
18 the question.

19 THE WITNESS: I agree with that.

20 BY MR. RAFFERTY:

21 Q Okay. And if we add those up, that  
22 would be 517 threshold breaches or stop orders,  
23 and zero reports to the DEA. I'll represent to  
24 you I counted them. So --

1 MR. STANNER: Objection to the form of  
2 the question.

3 BY MR. RAFFERTY:

4 Q All right. Now, interestingly --

5 MR. STANNER: Mr. Rafferty, I don't mean  
6 to interrupt you, if you're moving on to the next  
7 document, we have a new attorney in the room.

8 Can you put your appearance on the  
9 record, please?

10 MS. DEFRANCESCO: Absolutely. Lindsay  
11 DeFrancesco from Reed Smith for AmerisourceBergen.

12 MR. RAFFERTY: Good.

13 MR. STANNER: Fire away.

14 BY MR. RAFFERTY:

15 Q All right. Now, interestingly, if we  
16 look at what we're going to mark as Exhibit 38.

17 (Plaintiffs' Exhibit No. 38 was  
18 marked for identification.)

19 MR. RAFFERTY: 1433, Evan.

20 BY MR. RAFFERTY:

21 Q And this may have been marked by  
22 Mr. Hawal before, I don't know. This is -- this  
23 is the lengthy -- this is the 22, 23 pages --

24 MR. STANNER: You can make it a new one.

1 MR. RAFFERTY: What's that?

2 MR. STANNER: You want to make a new  
3 one?

4 MR. RAFFERTY: Yeah, let's just do that.  
5 It'll be faster and easier.

6 MR. STANNER: So this is 30 -- 38.

7 BY MR. RAFFERTY:

8 Q Okay. 38, okay.

9 All right. So if we look at this, this  
10 is a letter from the Department of Justice,  
11 August 2014. You're at McKesson at this point,  
12 right?

13 A That's correct.

14 Q And were you made aware of this  
15 correspondence when you were at -- while you've  
16 been at McKesson?

17 A (Peruses document.)

18 Q Do you recognize it, sir?

19 A (Peruses document.)

20 MR. STANNER: Oh, that -- what's up on  
21 the visual and what's here are different  
22 documents, at least what we have in our hands.  
23 This is dated November 4th, 2014.

24 MR. RAFFERTY: What's the number of it?

1 Oh, that's 1443. I marked the wrong one. I'm  
2 sorry. It's 1430 -- it's 1433. I should have  
3 marked it. It's my fault.

4 MR. STANNER: Do you want these back?

5 MR. RAFFERTY: Yeah -- well, you can  
6 have them. I don't care. We've got plenty.

7 (Counsel conferring.)

8 MR. STANNER: Exhibit 11.

9 MR. RAFFERTY: This is Exhibit -- this  
10 is Exhibit 11?

11 MS. MONAGHAN: What is up there is  
12 Exhibit 11.

13 MR. RAFFERTY: Okay. Okay. Good. That  
14 helps.

15 Okay. Now I'm going --

16 MR. STANNER: Okay.

17 MR. RAFFERTY: Well, if I had gone  
18 first, I would've had more time.

19 BY MR. RAFFERTY:

20 Q All right. Now, I'm going to screw  
21 things up because I actually had marked the right  
22 one. I just pulled my -- my working copy was the  
23 wrong one in that file. So now we're going to  
24 mark 38.

1 (Plaintiffs' Exhibit No. 38 was  
2 remarked for identification.)

3 MR. STANNER: This is --

4 MR. RAFFERTY: This is 38, and this is  
5 one that had not --

6 MR. STANNER: This is the one from  
7 before?

8 MR. RAFFERTY: Yes.

9 MR. STANNER: Okay. So not that one.

10 MR. RAFFERTY: Right.

11 THE WITNESS: We're looking at the --

12 MR. SATIN: The one, the 38 that we had  
13 marked 38 before and then we crossed out, we're  
14 going back to that one?

15 MR. RAFFERTY: Yeah.

16 BY MR. RAFFERTY:

17 Q Okay. So looking at 1433 -- I'm sorry,  
18 looking at Exhibit 38, this is a letter from the  
19 Department of Justice to the DEA dated  
20 November 4th, 2014.

21 Do you see that?

22 A I believe it's from the Drug Enforcement  
23 Administration, but, yes, I see that.

24 Q Which is a part of the Department of

1 Justice, true?

2 A It is, but it's not -- the letter is not  
3 from the Department of Justice.

4 Q Okay. And in fact, if we look at this,  
5 and we look at the -- it says -- if we look at  
6 page .2, it says: "We remain" -- the third full  
7 paragraph, sir.

8 "That having been said, we remain  
9 concerned that McKesson fails to appreciate the  
10 serious and systemic nature of the CSA-related  
11 problems that DEA has observed in its several  
12 investigations into your client's operations."

13 Do you see that?

14 A I do.

15 Q Okay. Are you familiar with this  
16 document, sir?

17 A I believe I read it before, yes.

18 Q Okay. And in fact, they say it was  
19 systemic in that paragraph.

20 And then if you go down to the next full  
21 paragraph, they say: "In order to release all  
22 McKesson-owned DEA registrants from administrative  
23 liability as you have requested, the agreed-upon  
24 registration consequences must reflect not only

1 the gravity of the offenses, but nationwide scope  
2 of McKesson's failure to report suspicious orders  
3 and to maintain effective controls against  
4 diversion."

5 Do you see that?

6 A I do.

7 Q All right. And then it says, the next  
8 paragraph it goes on, and then the several  
9 following paragraphs, it goes through numerous  
10 distribution centers where from 2008 to 2013  
11 reports of suspicious orders were not being made  
12 by McKesson to the DEA. Correct?

13 MR. STANNER: Objection to the form.

14 THE WITNESS: I see that.

15 BY MR. RAFFERTY:

16 Q Okay. In fact, it looks at McKesson  
17 Aurora. It says: "Lacked a functional suspicious  
18 order reporting system for approximately five  
19 years," in that last full paragraph on page 2.

20 It says: "McKesson Aurora reported a  
21 total of 16 orders as suspicious (in one batch,  
22 occurring in one quarter, related to one recently  
23 terminated pharmacy), while it processed a total  
24 of 1.6 million orders for controlled substances

1 from 2008 through 2012."

2 Do you see that?

3 A I do.

4 Q And then if we go to the next page:

5 "McKesson's distribution center in Livonia  
6 reported no suspicious" -- it says at the top --  
7 "reported no suspicious orders for approximately  
8 five years after McKesson's settlement with the  
9 DOJ."

10 You know that was in 2008, correct, the  
11 settlement?

12 A I do.

13 Q Okay. So there's five years.

14 And then it goes on in the next full  
15 paragraph: "Washington Court House, Ohio. Here  
16 again, McKesson did not report any orders as  
17 suspicious for years after the settlement with DOJ  
18 and DEA." Do you see that?

19 MR. STANNER: Objection to form.

20 THE WITNESS: I do.

21 BY MR. RAFFERTY:

22 Q And then going on to McKesson's  
23 Lakeland, the next paragraph on page 4, McKesson's  
24 distribution system, it says: "Once again, in

1     derogation of its responsibilities under the CSA  
2     and the 2008 MOA, McKesson Lakeland failed to  
3     report suspicious orders to the DEA for a  
4     five-year period."

5                     Do you see that?

6             A     I do.

7             Q     And then going down, McKesson in  
8     Methume -- Methuen, Massachusetts, in the next  
9     paragraph: "As with other distribution centers  
10    McKesson operated, McKesson failed to report any  
11    suspicious orders from May 2008 through November  
12    2013." Do you see that?

13            A     I do.

14            Q     And then, of course, what we know based  
15    on what we just saw from Cuyahoga County and  
16    Summit County, which is serviced by New Castle's  
17    distribution center, correct?

18            A     I believe that's correct, yes.

19            Q     So we know in New Castle, at least for  
20    Cuyahoga County and Summit County, from 2008 to  
21    2013, there were no reports made to the DEA of  
22    suspicious orders, correct?

23                   MR. STANNER: Objection -- objection to  
24    form, misstates.

1 THE WITNESS: According to the document,  
2 that's --

3 BY MR. RAFFERTY:

4 Q According to that document. That  
5 would -- that would basic- -- that would indicate  
6 a systemic and nationwide failure on McKesson's  
7 part during that time period. You would agree  
8 with that, right?

9 MR. STANNER: Objection to form, calls  
10 for a legal conclusion.

11 THE WITNESS: It's an issue that needed  
12 to be addressed, yes.

13 BY MR. RAFFERTY:

14 Q Now, going to the LDMP you talked about,  
15 and so you told Mr. Hawal, you were familiar with  
16 the LDMP. Do you recall that?

17 A I -- I've read the documents regarding  
18 that to some extent, yes.

19 Q Okay. And in fact, without going  
20 through it, you know that the LD -- the LDMP  
21 started in 2007, right?

22 A That's my understanding, yes.

23 Q Okay. And in fact, it basically  
24 established thresholds for four of the controlled

1 substances, oxycodone, hydrocodone and two others,  
2 at 8,000 doses per unit -- per month, correct?

3 MR. STANNER: Objection to form.

4 MR. SATIN: Objection pursuant to Touhy.

5 THE WITNESS: I -- that's my  
6 understanding of it.

7 BY MR. RAFFERTY:

8 Q Okay. And if a -- if an order exceeds  
9 that 8,000 threshold, based on your review of it  
10 while you've been at McKesson, you understand that  
11 that -- there must be due diligence done before  
12 that order is shipped. Correct?

13 MR. STANNER: Objection to form.

14 THE WITNESS: Based on what?

15 BY MR. RAFFERTY:

16 Q If it exceeds the threshold, then there  
17 should be due diligence done as to whether or not  
18 it's a legitimate order before it is shipped.

19 MR. STANNER: Objection to form. Vague,  
20 timeline.

21 THE WITNESS: Due diligence could be  
22 done before determining whether or not it would be  
23 shipped or not.

24 BY MR. RAFFERTY:

1 Q Well, it should be done, right?

2 MR. STANNER: Same objection.

3 THE WITNESS: Based on what?

4 BY MR. RAFFERTY:

5 Q It's an order exceeding the 8,000  
6 threshold.

7 A No, when you say "must," what are you  
8 referring to?

9 Q Well, is it your understanding that  
10 McKesson in 2007 and 2008 could or could not,  
11 whether they decided to or not, do due diligence  
12 on an order that exceeded the threshold --

13 MR. STANNER: Objection. Form --

14 BY MR. RAFFERTY:

15 Q -- before releasing?

16 MR. STANNER: Objection to form. Vague.

17 THE WITNESS: They --

18 MR. SATIN: Objection pursuant to Touhy.

19 THE WITNESS: They could, yes.

20 BY MR. RAFFERTY:

21 Q Do you know whether or not the LDMP --  
22 if we look at exhibit -- I don't know what the  
23 LDMP was, so --

24 MR. SATIN: I don't -- I actually don't

1 know that we've actually seen the LDMP.

2 MR. RAFFERTY: Okay. Well, let's go  
3 ahead and do that real quick. That will be  
4 Exhibit 39.

5 (Plaintiffs' Exhibit No. 39 was  
6 marked for identification.)

7 MR. RAFFERTY: 1333.

8 BY MR. RAFFERTY:

9 Q Okay. And if we look here, it says the  
10 LDMP was -- the task is: "This procedure outlines  
11 requirements and activities to proactively review  
12 customers' purchases of DEA identified lifestyle  
13 drugs and actions to take based upon analysis of  
14 customer purchases."

15 And that's talking about due -- due  
16 diligence, correct?

17 MR. STANNER: Objection to form.

18 THE WITNESS: That's correct.

19 BY MR. RAFFERTY:

20 Q Okay. So even based on the LDMP, you  
21 need to do due diligence on orders that exceed the  
22 threshold.

23 MR. STANNER: Objection --

24 BY MR. RAFFERTY:

1 Q According to the policy.

2 MR. STANNER: Objection to form.

3 THE WITNESS: That's my understanding,  
4 yes.

5 BY MR. RAFFERTY:

6 Q Okay. And if you're not doing due  
7 diligence, and just simply releasing sales without  
8 doing any due diligence for orders that exceed  
9 8,000, that would be in violation of McKesson's  
10 own operating manual.

11 MR. STANNER: Objection to the form.  
12 Several grounds.

13 THE WITNESS: I believe that would be  
14 correct, yes.

15 BY MR. RAFFERTY:

16 Q And that was put in place in order to --  
17 to help maintain effective controls against  
18 diversion. That's the purpose of the LDMP. You  
19 would agree with that, right?

20 MR. STANNER: Same objections.

21 THE WITNESS: That would be my  
22 understanding, yes.

23 MR. RAFFERTY: Okay. Let's look  
24 at 1829. 1829. And mark that as Exhibit 40.

1 (Plaintiffs' Exhibit No. 40 was  
2 marked for identification.)

3 BY MR. RAFFERTY:

4 Q And if you look at this, this is a  
5 letter to the Associate Chief Counsel, Diversion  
6 and Regulatory Litigation Section, DEA, back in  
7 April of 2007. Do you see that?

8 A I do.

9 Q Okay. And it says here under A,  
10 "Lifestyle Drug Monitoring Program," and it says,  
11 number 4: "When a pharmacy customer appears on a  
12 report for the first time (because they have met  
13 or about to exceed 8,000 dosage units for the  
14 month), the DC will review the orders to determine  
15 whether it was justified based on the type of  
16 customer, e.g., national chain account, and  
17 historic -- and the historical purchases by the  
18 customer. If there are still questions, the  
19 customer will not be allowed to exceed the 8,000  
20 monthly dosage limit until a due diligence report  
21 has been completed. The DC operations and  
22 regulatory staff will conduct a review of these  
23 accounts which will include contacting the  
24 customer to determine the basis for the request to

1       exceed the monthly limit."

2                       Do you see that?

3               A       I do.

4               Q       Okay. And that's being -- that is being  
5       represented to the DEA as to what's going to  
6       happen underneath the LDMP in satisfaction of its  
7       obligations to maintain effective controls.

8                       MR. STANNER: Object --

9       BY MR. RAFFERTY:

10              Q       Correct?

11                      MR. STANNER: Objection to form.

12                      THE WITNESS: I agree.

13       BY MR. RAFFERTY:

14              Q       Okay. And then if we look at 2112, it  
15       did not do that.

16                      Once that's been reported to the DEA  
17       that that's the process that's being used, and if  
18       they don't do that, then they're violating their  
19       own policy, they're violating what they told the  
20       DEA, correct?

21                      MR. STANNER: Objection to form.

22                      THE WITNESS: I'm not sure I agree with  
23       the characterization that they're violating what  
24       they told DEA. It wouldn't be consistent with the

1 policy.

2 BY MR. RAFFERTY:

3 Q Okay. Well, and they're being --  
4 representing to the DEA that that's what they're  
5 going to do, right?

6 MR. STANNER: Objection to form.

7 THE WITNESS: Right.

8 MR. RAFFERTY: Okay. So let's mark 2112  
9 as Exhibit 41.

10 (Plaintiffs' Exhibit No. 41 was  
11 marked for identification.)

12 BY MR. RAFFERTY:

13 Q Another very small spreadsheet. And  
14 this, I'll represent to you, is information from  
15 the ARCOS database, Mr. Boggs.

16 And if you look at this -- this is one  
17 particular pharmacy, this is the Rite Aid -- this  
18 is in May of 2007, the Rite Aid Pharmacy in  
19 Cuyahoga County, okay, 3402 Clark Avenue.

20 Do you see that address, the buyer  
21 address?

22 A I do.

23 Q Okay. And if we go all the way down to  
24 the second to last entry, I'll tell you that it is

1     that second to last entry that is dated May 7th,  
2     2007, with the purchase of 1,000 that puts that  
3     store, that one store at 8100 doses for the month,  
4     seven days into the month.   Okay?

5                   MR. STANNER:   Objection to the form.

6     BY MR. RAFFERTY:

7           Q     Do you see that?

8           A     Okay.

9           Q     And I'll make that representation to  
10    you.   You can do the math separately.

11                   But assuming that's true, you'll see  
12    that as the month goes on, and you go all the way  
13    back to the final page, by the time you add up all  
14    the way through May 31st, 2007, so orders that  
15    were shipped to this Rite Aid by McKesson, it  
16    totals a grand total of 26,900 oxycodone doses.

17                   So what is that, approximately three --  
18    over three times the amount of the threshold,  
19    correct?

20                   MR. STANNER:   Objection to form.

21                   THE WITNESS:   I'll agree.

22     BY MR. RAFFERTY:

23           Q     And every order that's placed over that  
24    threshold, according to what the LDMP is, and

1 according to what McKesson told the DEA was the  
2 process, there should have been due diligence done  
3 on these orders to determine whether or not they  
4 were legitimate before they were shipped, correct?

5 MR. STANNER: Objection to form.

6 THE WITNESS: That's what the policy  
7 states, yes.

8 BY MR. RAFFERTY:

9 Q Okay. And if they didn't do that, then  
10 that would be violating the policy, true?

11 MR. STANNER: Objection to form.

12 THE WITNESS: That would be true.

13 BY MR. RAFFERTY:

14 Q Okay. And, in fact, there is no due  
15 diligence -- there's no indication that any due  
16 diligence had been done on this particular  
17 pharmacy for these orders, and in that regard,  
18 that would be not maintaining -- McKesson not  
19 maintaining effective controls against diversion,  
20 correct?

21 MR. STANNER: Objection to the form.

22 Assumes facts, misstates, vague --

23 THE WITNESS: I don't know if there was  
24 due diligence done or not.

1 BY MR. RAFFERTY:

2 Q Well, if there wasn't -- if there wasn't  
3 due diligence on this, that would concern you,  
4 correct?

5 MR. STANNER: Objection to form.

6 THE WITNESS: I don't know what they --  
7 if there was some information between McKesson and  
8 Rite Aid or not.

9 BY MR. RAFFERTY:

10 Q But if --

11 A I have no idea what was done or not.  
12 This is way before my time.

13 Q But if there wasn't, that would concern  
14 you, correct?

15 MR. STANNER: Objection to form.

16 THE WITNESS: It might. I don't know  
17 what was known.

18 BY MR. RAFFERTY:

19 Q And it's important -- you would agree --  
20 I think you told Mr. Hawal earlier in the day that  
21 it's important to document that due diligence is  
22 being done.

23 You would agree with that, true?

24 MR. STANNER: Objection to form.

1 THE WITNESS: I think it's important to  
2 do that, yeah.

3 BY MR. RAFFERTY:

4 Q Okay. Now, if we look at one particular  
5 pharmacy.

6 MR. RAFFERTY: How much time have I  
7 used?

8 THE VIDEOGRAPHER: You have four  
9 minutes --

10 MR. RAFFERTY: Four minutes. All right.

11 BY MR. RAFFERTY:

12 Q You understood there were some red flags  
13 -- you understand what the concept of red flags  
14 are in terms of diversion, correct?

15 A I do.

16 Q And some of those red flags are, for  
17 example, if a pharmacy is in a geographic area  
18 where there's historical -- there's been a  
19 historical high amount of abuse or usage of  
20 opioids, correct?

21 MR. STANNER: Objection to form.

22 THE WITNESS: That -- that can be a red  
23 flag, yes.

24 BY MR. RAFFERTY:

1           Q     And it can -- if it's -- if it's a  
2     pharmacy in a small rural town and it's ordering  
3     massive amounts or large amounts per capita,  
4     that's another potential red flag, correct?

5           A     It could be, yes.

6           Q     Okay. The percentage of controlled  
7     prescriptions, meaning the percentage of  
8     oxycodone, for example, compared to the total  
9     prescriptions, if it's too high, that's another  
10    red flag, right?

11          A     It could be.

12          Q     Okay.

13               MR. RAFFERTY: If we look at  
14     Exhibit 1891.

15               MR. STANNER: Sorry, are you handing us  
16     one?

17               MR. RAFFERTY: No, I say that for Evan's  
18     purposes. I'm sorry.

19               No, you know what, let's look at --  
20     let's look at 1865, Evan.

21               And this will be Exhibit 42.

22               (Plaintiffs' Exhibit No. 42 was  
23     marked for identification.)

24               MR. STANNER: Thank you.

1 BY MR. RAFFERTY:

2 Q And going back to that last section that  
3 we were just talking about, in fact, during your  
4 time at the DEA, if you had known or it was being  
5 reported to you that due diligence was not being  
6 performed on pharmacies under the LDMP by  
7 McKesson, and they were simply shipping the orders  
8 without that due diligence, that would concern you  
9 as a DEA agent, wouldn't it?

10 MR. SATIN: Objection pursuant to Touhy.

11 MR. STANNER: Objection to form.

12 THE WITNESS: I don't believe I can  
13 answer that question at this time.

14 BY MR. RAFFERTY:

15 Q Okay. If we look at what we've marked  
16 as Exhibit 42, I'll represent to you this is a  
17 document discussing a pharmacy in Warren, Ohio.

18 Do you know where Warren, Ohio, is?

19 A In Ohio. I don't know -- I don't know  
20 exactly where in Ohio it is.

21 Q It's approximately 56 miles, as I  
22 calculated on my phone, from Cleveland.

23 A Okay.

24 Q Okay. So it says here in this one, if

1     you look at the page 2, it says: "Franklin and  
2     Med Fast, New Castle." "Alex, in case Blaine  
3     didn't get back to you, he wants a Level II done  
4     on both of those accounts. You said you were  
5     going to talk to Gino, too. Like I said, if he  
6     wants those spreadsheets based on month-end  
7     suspicious again, just let me know. Franklin  
8     bought more dosages than any retail account in  
9     August and October."

10                     Do you see that?

11             A     I do.

12             Q     And this is in 2007.

13                     Then if you look at page 2 further up in  
14     the e-mail chain, it says: "Franklin's BPR has  
15     been at or extremely close to 100 percent since  
16     the start of BPR."

17                     Do you know what BPR is?

18             A     BPR has to do with brand. I don't  
19     recall off the top of my head what the -- the PR  
20     is.

21             Q     Okay. "Most recently, his October BPR  
22     was 98.79. One thing to note: The number one  
23     leakage item was OxyContin 80 milligrams. The  
24     dispensing/purchasing discrepancy on this drug

1       caused a minus 2.10 percent decrease in his BPR."

2                       Do you see that?

3               A       I do.

4               Q       Leakage, what is that?

5               A       Leakage, as I understand it, would be a  
6       customer's need that -- hypothetically, they  
7       needed 15,000 doses, they bought 10,000 from us  
8       and maybe 5,000 from Cardinal or ABC. That would  
9       be -- the 5,000 would be the leakage."

10              Q       Which can be another red flag, right, if  
11       a pharmacy is going and buying a controlled  
12       substance -- the same controlled substances from  
13       multiple distributors?

14                      MR. STANNER: Objection to form.

15                      THE WITNESS: It could be, yes.

16       BY MR. RAFFERTY:

17              Q       Okay. All right. Then if we go --  
18       that's 2007.

19                      And then if we look at -- and this is a  
20       time period that the LDMP is established, correct,  
21       November 2007?

22              A       I believe around that time frame, yes.

23              Q       Yeah, okay. All right. And then if we  
24       go -- that means it would be 8,000 -- under the

1 LDMP, the threshold is 8,000 for, for example,  
2 oxycodone?

3 MR. STANNER: Objection to form.

4 BY MR. RAFFERTY:

5 Q We saw that in the policy.

6 MR. STANNER: Same objection, prior two  
7 questions.

8 MR. RAFFERTY: Okay. And then if we  
9 look at 1881, Evan. And mark that as Exhibit 43.

10 (Plaintiffs' Exhibit No. 43 was  
11 marked for identification.)

12 BY MR. RAFFERTY:

13 Q It says here January 2009. Do you see  
14 that?

15 It says: "Can you please approve the  
16 attached TCR for lorazepam, oxycodone and  
17 hydrocodone at Franklin Pharmacy. A Level II  
18 review is on file, and I was just in the store on  
19 Friday. Frank's business is up overall due to  
20 relationships with local outpatient facilities and  
21 regional pain management clinics."

22 That's another red flag too if a lot of  
23 the prescriptions are being serviced by pain  
24 clinics, correct?

1 MR. STANNER: Objection to form.

2 THE WITNESS: It may be. It depends  
3 on -- on what the pain clinic is.

4 BY MR. RAFFERTY:

5 Q All right. Let's turn to page 4. Here  
6 it says -- the threshold change form says, the  
7 current threshold for this pharmacy is 50,000 for  
8 oxycodone.

9 See that down there, "current  
10 threshold," number 250?

11 A I do.

12 Q And then it says: "Increase amount" --  
13 up at the top -- "20,000." So they want to go  
14 from 50,000 to 70,000 dosage units per month of  
15 oxycodone, correct?

16 MR. STANNER: Objection to form.

17 THE WITNESS: That's what it appears,  
18 yes.

19 BY MR. RAFFERTY:

20 Q And then for hydrocodone, they go from  
21 35 to 45,000. Do you see that?

22 A That would be the request -- the math on  
23 the requested amount.

24 Q Okay. And then -- and do you know if

1     this was approved?

2                   MR. STANNER:  Objection to form.

3                   MR. SATIN:  Objection pursuant to Touhy  
4     to the extent your information is based on your  
5     time at the DEA and your answering it would reveal  
6     that information.

7                   THE WITNESS:  I don't -- I don't know if  
8     this was approved or not.

9                   MR. RAFFERTY:  Okay.  Well, let's take a  
10    look at 1876.  1876 is -- 1876.  We'll mark it as  
11    Exhibit 44.

12                   (Plaintiffs' Exhibit No. 44 was  
13    marked for identification.)

14    BY MR. RAFFERTY:

15               Q     And here in 2009, so -- I'm sorry, in  
16    2013, it shows on this chart, Franklin Pharmacy,  
17    controls percentage to Rx purchased, 35.65.  
18    That's down in the chart about halfway through.  
19    Do you see that, Franklin Pharmacy?

20               A     I do.

21               Q     And it says 35.65 controls to Rx  
22    purchased, and 31.25 oxy percentage of controls,  
23    and that's high, isn't it?

24                   MR. STANNER:  Objection to form.

1 THE WITNESS: Not just on the surface,  
2 no.

3 BY MR. RAFFERTY:

4 Q Oh, okay. Well, it says at the top:  
5 "We are going to set up CSMP visits for all of the  
6 accounts below. This is based on Joel Lumpkin's  
7 monthly reports. The first column represents  
8 higher than normal controls percent to total  
9 purchases. The second column represents" -- this  
10 would be IMSMC over 25 percent. "The second  
11 column represents high OxyContin purchases to  
12 total control purchases (this is over 25  
13 percent)."

14 Do you see that?

15 A I do.

16 Q So according to this, it's high, and  
17 that's why it's being flagged, correct?

18 MR. STANNER: Objection to form.

19 THE WITNESS: I don't know what the  
20 purpose of it is.

21 MR. RAFFERTY: Okay. Well, let's look  
22 at 1912 now. This is Exhibit 45.

23 (Plaintiffs' Exhibit No. 45 was  
24 marked for identification.)

1 BY MR. RAFFERTY:

2 Q And here, it says -- this is to Gary  
3 Boggs from Gary Davis. So does this reflect  
4 your -- or refresh your memory that you're  
5 familiar with this Franklin Pharmacy?

6 A No, I --

7 MR. STANNER: Objection to form.

8 BY MR. RAFFERTY:

9 Q Okay. Well, let me show you a couple of  
10 areas. It says, to Gary Boggs from Gary Davis.  
11 "I continued to research our concerns regarding  
12 Franklin's Pharmacy and uncovered information last  
13 night regarding the dispensing practices of the  
14 staff at the pharmacy that are cause for concern,"  
15 and then it goes through and lists some of those.

16 And then he says: "My recommendation"  
17 -- "This has resulted in my recommendation to  
18 terminate the sale of controls to Franklin  
19 Pharmacy."

20 Do you see that?

21 A I do.

22 Q And that is in 2015.

23 And part of what he does on page 76 of  
24 the document, point -- 1912.76 at the top right

1 corner. Do you see that? Are you there?

2 A I am.

3 Q Okay. And then if we look at that, he  
4 references that fact that the pharmacy was  
5 selected for an onsite after a review by Senior  
6 Director of Regulatory Affairs Gary Boggs of the  
7 New Castle solver. And he says: "Showed the  
8 pharmacy Rx/controls percentage at 32.09." Do you  
9 see that?

10 A I do.

11 Q Okay. And then if we go to the next  
12 page, it says -- or, I'm sorry, go to page 87 --  
13 .87. And it talks about -- it's got a chart there  
14 of the "Top six controls listed by monthly dosage  
15 for the pharmacy below."

16 Do you see that?

17 And it's got monthly average, 41,224  
18 dosage units of oxy, and 19,570 doses for hydro,  
19 and oxycodone 30 milligrams, 6,302. Do you see  
20 that?

21 A I do.

22 Q And it says: "It should be noted that  
23 in fiscal year '16, quarter 1, solver for New  
24 Castle that the pharmacy listed as the largest

1 dispensing pharmacy for 9,143 oxycodone doses."

2 Do you see that?

3 A I do.

4 Q And then if you go to the final page, it  
5 says: "The level of" -- and it's the second full  
6 paragraph: "The level of controls dispensed that  
7 are discussed in detail above are themselves -- in  
8 themselves red flags that are of concern," and  
9 then it lists several others.

10 Now, as this was being dispensed, and  
11 the monthly average was 41,224 for oxycodone alone  
12 and 20,570, do you know what the population is of  
13 Warren, Ohio?

14 A Not off the top of my head, I do not.

15 Q Did you know it was 40,000 people, sir?

16 MR. STANNER: Objection to form, asked  
17 and answered.

18 BY MR. RAFFERTY:

19 Q Look at -- look at page 77 of the  
20 document. .77.

21 It says at the top, "In 2013, the  
22 population of Warren was listed at 40,768,"  
23 correct?

24 A It does.

1           Q     So you're shipping in 40 -- over 40,000  
2     dosage units, you've got thresholds set at 50,000  
3     dosage units, and a request for 20,000 more being  
4     shipped of oxycodone alone into a pharm- -- into a  
5     pharmacy for -- dating all the way back to 2007,  
6     so for eight years into a town that has fewer  
7     residents than the amount of dosages are that you  
8     are shipping in. True?

9           MR. STANNER: Objection to form.

10          MR. SATIN: Objection to the "you."

11          THE WITNESS: The other -- the sentence  
12     after that is: "The county has 206,044, and the  
13     patients from that county certainly could have  
14     gone to that pharmacy.

15     BY MR. RAFFERTY:

16          Q     Is that what you determined?

17          A     I'm saying that that's a possibility.  
18     The same as you determined that -- how much they  
19     went to that population.

20          Q     I'm reading a document that you were  
21     involved in.

22          A     That --

23          Q     A pharmacy that you were involved in.  
24     Yes or no, you were shipping into a pharmacy in a

1 town of 40,000 people, dose -- oxycodone dosage  
2 units of over 40,000 per month, and hydrocodone of  
3 over 19,000 doses per month. True?

4 MR. STANNER: Objection to the form of  
5 the question. Objection to the "you."

6 MR. SATIN: And it's a foundational  
7 question.

8 BY MR. RAFFERTY:

9 Q True?

10 MR. SATIN: You haven't established that  
11 he was the one doing the shipping, sir.

12 MR. RAFFERTY: McKesson.

13 MR. STANNER: Same objections.

14 THE WITNESS: I'm trying to put this in  
15 proper perspective for me to understand --

16 BY MR. RAFFERTY:

17 Q I'm asking -- you don't get to ask --  
18 you don't get to rephrase my question.

19 MR. STANNER: Excuse me. You can't talk  
20 over him. You asked the question. He's giving  
21 you the answer.

22 MR. RAFFERTY: No, he's not. He is  
23 giving his answer he wants to give.

24 MR. STANNER: You didn't even -- you

1 didn't even listen to the words.

2 BY MR. RAFFERTY:

3 Q Yes or no, sir, were you -- as McKesson,  
4 was McKesson shipping into a pharmacy in Warren,  
5 Ohio, a population of 40,000, oxycodone over  
6 40,000 doses a month, and hydrocodone over 19,000  
7 doses a month?

8 MR. STANNER: Same --

9 BY MR. RAFFERTY:

10 Q Yes or no?

11 MR. STANNER: Same objections.

12 THE WITNESS: Yes.

13 MR. RAFFERTY: Nothing further. I will  
14 reserve the rest for the Touhy.

15 MR. STANNER: So, we understand that's  
16 your position, and I understand why. Obviously  
17 by -- if you choose to leave this open, that's  
18 fine. We do not concede necessarily that you're  
19 entitled to do this. We haven't -- we don't waive  
20 any objections to your request to the DEA filed in  
21 January, so we'll deal with all that in front of  
22 the special master when the time comes. But  
23 understood.

24 MR. RAFFERTY: Well, and one of the

1 things -- I also want to make sure our position on  
2 the record is that if for some reason there is no  
3 ability to ask the Touhy questions, that we then  
4 are reserving the right to come back and finish up  
5 the time.

6 MR. STANNER: And we would object to  
7 that.

8 The witness is here. If you have  
9 non-Touhy questions, you should feel free to ask  
10 them.

11 MR. RAFFERTY: All right. So how much  
12 time do we have left?

13 THE VIDEOGRAPHER: Six hours and 12  
14 minutes is currently used on the record.

15 MR. RAFFERTY: 48 minutes.

16 THE VIDEOGRAPHER: Do you want to go  
17 back on -- off the record?

18 MR. RAFFERTY: Off the record, yeah.  
19 I'm sorry.

20 THE VIDEOGRAPHER: The time is 5:09 p.m.  
21 We're going off the record.

22 (Recess.)

23 THE VIDEOGRAPHER: The time is 5:19 p.m.  
24 We're back on the record.

1 CROSS-EXAMINATION

2 BY MR. STANNER:

3 Q Mr. Boggs, good evening.

4 A Good evening.

5 Q I want to ask you briefly about your  
6 career before McKesson. How long did you work at  
7 the DEA?

8 A Probably a little over 27 years.

9 Q Okay. And why did you decide to leave  
10 your position at the DEA?

11 A As a special agent for the government,  
12 they have mandatory retirement at age 57. There  
13 are some exceptions that you can get a waiver,  
14 which I was given a waiver for one year. I worked  
15 for about six or so months into that waiver, and  
16 then I decided that I wanted to retire and spend  
17 more time with my grandchildren and my daughter.

18 Q And how long were you retired before you  
19 started to work again?

20 A I retired the end of June of 2012. I  
21 started doing some consulting probably around the  
22 summer of 2013.

23 Q And before you were at the DEA, what was  
24 your job before that?

1           A     Before the DEA, I was a deputy sheriff  
2     in Orange County, Florida, for about eight and a  
3     half years.

4           Q     What did you do before that?

5           A     College student.

6           Q     Mr. Boggs, I want to ask you some  
7     questions about diversion. What is diversion?

8           A     Diversion is the act of taking  
9     pharmaceutical controlled substances out of the  
10    closed system of distribution or from legitimate  
11    channels, patients, and then moving them into --  
12    outside of that for abuse.

13          Q     And at McKesson, is it your  
14    responsibility to prevent diversion?

15          A     Well, we can certainly present --  
16    prevent -- try to prevent some of diversion. We  
17    certainly are not able to prevent all diversion.

18          Q     Well, why can't you prevent all  
19    diversion?

20          A     Diversion can occur at different levels  
21    outside of the distribution's control. Diversion  
22    can occur at a pharmacy by an employee pilfering  
23    it. It can occur by a pharmacy being burglarized  
24    or robbed. Diversion can occur even after

1 controlled substances have left with a legitimate  
2 patient and are sitting in a medicine cabinet of  
3 someone's home, and someone steals them out of  
4 that medicine cabinet, that's diversion. We  
5 certainly can't control that.

6 Q Everything you just described is a  
7 crime. Is that -- is there diversion other than  
8 crime?

9 A No, diversion --

10 MR. RAFFERTY: Objection.

11 THE WITNESS: Diversion is a crime.

12 MR. STANNER: Sorry, can you tell me the  
13 basis?

14 MR. RAFFERTY: Well, I think it's lack  
15 of foundation.

16 MR. STANNER: Oh, okay. I'll try and  
17 lay a foundation then.

18 BY MR. STANNER:

19 Q Is diversion crime?

20 A In my opinion, it is, yes.

21 Q Is it always a crime?

22 A Yes.

23 Q Okay. So in your capacity at McKesson,  
24 when you say you try to limit diversion, does that

1 mean you're trying to limit crime?

2 A I'm sorry, could you repeat the  
3 question?

4 Q Sure. In your -- at McKesson, when you  
5 say you -- part of your role is to try to limit  
6 diversion, does that mean you're trying to limit  
7 crime?

8 A It means we're trying to identify or  
9 prevent situations where a crime would occur. As  
10 I said earlier, we have security measures in our  
11 facility to prevent employee pilferage. If the --  
12 if a rogue employee was to pilfer, that would be a  
13 crime.

14 Q And can you describe, what is a  
15 diversion trend?

16 A There's different types of schemes that  
17 can occur that would cause a -- what I would  
18 consider a trend. We've -- we've seen diversion  
19 trends, such as rogue internet pharmacies, be a  
20 diversion trend. It's a massive criminal scheme.  
21 We've seen pill mills in Florida. That's a  
22 diversion trend and is a criminal scheme.

23 Q Are pill mills still a problem?

24 MR. RAFFERTY: Objection.

1                   THE WITNESS: There are still some pill  
2   mills that can be a rogue pain management facility  
3   or something to that nature, yes.

4   BY MR. STANNER:

5               Q     Okay. Is that -- is that a diversion  
6   trend that you're particularly focused on now?

7               A     We try to focus on anything within our  
8   ability to prevent diversion, and we see some pain  
9   management clinics that are rogue. We see some  
10   specifically bad doctors. They're -- they're  
11   certainly not in the same context as what we knew  
12   like the Florida pill mills to be, they're nothing  
13   like that at all.

14              Q     Okay. What are diversion trends that  
15   are occurring -- that have been occurring since  
16   your time at McKesson?

17              A     Well, first, they're vastly different  
18   than before. They're looking at the pharmacies  
19   where the pharmacists or their staff may not be  
20   exercising appropriate due diligence. That can be  
21   one -- one area that we look at. We certainly  
22   still continue security measures around our  
23   facility.

24              Q     Well, what -- what do you do to keep

1     abreast of diversion trends?

2             A     I read anything on the internet that I  
3     can identify as diversion trends. I read the  
4     National Survey on Drug Use and Health. I read  
5     the DEA's annual report that they would put out on  
6     their website on drug -- the national drug trend.  
7     We attend conferences such as the National  
8     Association of Drug Diversion Investigator  
9     conferences, the National Association of State  
10    Controlled Substance Authority, associations -- we  
11    attend those conferences. We attend other  
12    conferences where DEA might be a keynote speaker  
13    or break- -- have presentations at breakout  
14    groups.

15            Q     What if a doctor writes a large  
16    prescription, is that diversion?

17            A     It can be. It may not be. The mere  
18    fact that it's large in and of itself doesn't mean  
19    that it's diversion. For the -- part of the  
20    opioid epidemic has been fueled by  
21    overprescribing. That's not illegal prescribing  
22    but it's overprescribing.

23            Q     Can you explain what the difference --  
24    you just used two different terms,

1 "overprescribing" and "illegal prescribing." Can  
2 you explain what you mean by those?

3 A Sure. Illegal prescribing would be when  
4 a doctor would be complicit in a scheme that they  
5 know the patient doesn't need it, the patient is  
6 paying in cash, the doctor writes a prescription  
7 for a patient they've never seen before or  
8 examined before. The doctor meets -- meets  
9 someone in a parking lot and writes a prescription  
10 in exchange for money. Those would be illegal  
11 prescriptions.

12 Overprescribing, on the other hand,  
13 might be a situation where a doctor has a  
14 legitimate patient, has a legitimate need for the  
15 drugs, but instead of writing that prescription  
16 for, say, 15 days, they write it for 30 days.  
17 It's a perfectly legitimate prescription but it's  
18 overprescribing. It's prescribing more than what  
19 that patient would need.

20 Q Can you give a -- can you give the jury  
21 an example of a prescription that might be  
22 overprescription -- that might be an  
23 overprescription without being diversion?

24 A Sure. You might have a patient go to a

1 dentist and have a tooth -- tooth extraction, and  
2 the patient needs the medication for maybe a  
3 couple of days, but the doctor writes it for  
4 30 days. That's overprescribing.

5 Q So does the -- does McKesson's  
6 compliance program target overprescribing, as  
7 you've just described it?

8 A It -- it can't.

9 Q Why not?

10 A We don't see the prescription. We're  
11 prohibited by law under HIPAA from knowing  
12 anything about the patient or any consultation  
13 between the patient and the doctor, and we don't  
14 have access to prescription -- the prescription  
15 itself.

16 Q You were asked some questions earlier  
17 today about towns that received larger volumes of  
18 pills relative to their population. Do you  
19 remember some of those questions?

20 A I do.

21 Q Do you know if those numbers are the  
22 result of diversion or of overprescribing?

23 A I don't.

24 MR. RAFFERTY: Objection.

1 BY MR. STANNER:

2 Q If -- if you know, do you -- do you know  
3 if those numbers are the result of prescribing --  
4 overprescribing or diversion?

5 A It could be a combination of both.

6 Q Are you able to say with any specificity  
7 how much overprescribing is part of the problem  
8 versus diversion?

9 A I -- it would be my experience that a --  
10 a very large percentage of opioids that are out  
11 there are -- are through overprescribing.

12 MR. RAFFERTY: Objection.

13 BY MR. STANNER:

14 Q While at McKesson, has your role  
15 included responsibility for submitting suspicious  
16 order reports?

17 A It has.

18 Q What is a suspicious order?

19 A A suspicious order would be an order  
20 placed by the customer that is -- has been deemed  
21 as an order of unusual size, an order that  
22 deviated substantially from a normal pattern or  
23 frequent -- unusual frequency.

24 Q Are you able to estimate roughly how

1 many orders McKesson gets of unusual size, pattern  
2 or frequency in a given month?

3 MR. RAFFERTY: Objection.

4 THE WITNESS: Probably thousands.

5 BY MR. STANNER:

6 Q Mr. Boggs, I'll rephrase.

7 Mr. Boggs, do you know how many  
8 suspicious orders McKesson reports to the DEA in a  
9 typical month?

10 MR. RAFFERTY: Objection.

11 THE WITNESS: Thousands.

12 BY MR. STANNER:

13 Q So does that mean that the customers who  
14 place those suspicious orders are suspicious  
15 customers?

16 A Absolutely not.

17 Q If a customer places a suspicious order,  
18 does that mean the order is probably for some  
19 illegal purpose?

20 A Without knowing more about the customer  
21 or more information, absolutely not.

22 Q If a customer places a suspicious order,  
23 does that mean that order is likely to be  
24 diverted?

1           A     It does not.

2           Q     Well, if the orders are suspicious  
3     orders, why doesn't that make the customers  
4     suspicious?

5           A     I think that suspicion in this  
6     particular context is not the type of suspicion  
7     that -- in the way you and I might use the context  
8     of suspicious. That's the term under the  
9     regulation as to what it's called. But the order  
10    is simply identified as an order of unusual size,  
11    an order that deviates substantially from a normal  
12    pattern or unusual frequency.

13          Q     So if you don't consider those orders  
14    suspicious in the normal -- in the lay sense of  
15    the term, why do you report them?

16          A     Because we have a regulatory obligation  
17    to identify and report those orders that are  
18    deemed under that three criteria.

19          Q     So can you give me an example of how a  
20    legitimate pharmacy might place an order that you  
21    would flag as suspicious, and yet not consider to  
22    be suspicious in the lay sense?

23          A     You could have an order come in,  
24    they're -- someone didn't put the correct amount

1     that they wanted. They fat fingered a number in  
2     there and made a -- made an error, and they're  
3     trying to order actually more than what they  
4     really intended to. But because that order was  
5     placed with us, that would be deemed as an order  
6     of unusual size and reported as suspicious.

7                 You may have a situation where a  
8     customer has an increase in demand a particular  
9     month and they've run out of supply, and when they  
10    place an order, it exceeds their threshold, so it  
11    might be unusual size.

12                Q     Can you -- can you give us an example of  
13    how a typical customer orders with McKesson for  
14    controlled substances?

15                A     Many of them order electronically  
16    through CSOS, the Controlled Substances Ordering  
17    System. It's an electronic ordering system.

18                Q     And how often do they place orders? A  
19    typical customer, how often does a typical  
20    customer place an order?

21                A     They may place orders daily. They  
22    may -- for a particular product, say, for example,  
23    hydrocodone, they may order a thousand count  
24    bottle today, and then they don't place any orders

1     for hydrocodone over the next couple of days or a  
2     week or so until they need to replenish their  
3     stock.

4             Q     But would -- would that order of a  
5     thousand strike you as a suspicious order?

6             A     Not at all.

7             Q     If that customer -- you just said the  
8     customer might not order -- can you give me an  
9     example of how that customer's ordering pattern  
10    might play out over, say, ten days?

11            A     Again --

12                   MR. RAFFERTY:  Objection.

13                   THE WITNESS:  -- they may not order for  
14    a couple of days.  They may order every day.  They  
15    may have an automatic order -- ordering system in  
16    place that places the order repeatedly.

17                   There's a variety of different ways in  
18    which they would -- would order, and they may not  
19    -- they don't all order in the same fashion.

20    BY MR. STANNER:

21             Q     So if a customer orders in the way that  
22    you just described, is that an unusual pattern or  
23    frequency?

24             A     It may be an unusual frequency.  It

1     could be, yes.

2             Q     Does that give you -- so -- so what  
3     would you do if a customer ordered in that way?

4             A     We would -- if it triggered a suspicious  
5     order, that order would be blocked, it would not  
6     be shipped, and that order would be reported to  
7     the DEA.

8             Q     Is it possible that a customer might be  
9     suspicious without ever placing a, quote/unquote,  
10    suspicious order under the regulation?

11            A     Yes.

12            Q     Can you give me an example of how that  
13    might happen?

14            A     We may see the -- a customer's -- what  
15    they are actually ordering may be isolated to a  
16    particular product or a particular strength of a  
17    product, and they're not ordering necessarily  
18    anything else, but yet the orders that they are  
19    placing are not unusual size, frequency or  
20    pattern. Something like that might be a red flag  
21    that would cause us to go out and look at that  
22    customer and determine what's going on at that  
23    customer.

24            Q     So if you were to find a customer that

1     was suspicious but had no history of suspicious  
2     orders, what would you do?

3             A     We would -- depending upon the facts and  
4     circumstances, we might do an onsite visit and  
5     talk to the owner or the pharmacist in charge  
6     there. We might get updated dispensing data from  
7     the pharmacy on what they're actually dispensing  
8     in total and review that from -- from the customer  
9     to see if there's anything else that we need to be  
10    concerned about, make some additional inquiries of  
11    the customer as to what -- what's going on at  
12    their facility.

13            Q     Would you -- would you consider  
14    terminating a customer that had never placed a  
15    suspicious order?

16            A     Many of the customers that we have  
17    terminated may or may not have -- the reason for  
18    the termination would not necessarily be that they  
19    had or hadn't placed a suspicious order.

20            Q     In your position, do you ever review  
21    reports of suspicious orders?

22            A     I receive them on a regular basis, and  
23    from time to time during the week, I will -- I  
24    will look at those reports, yes.

1 Q Why do you look at the reports?

2 A To see if there's anything in there that  
3 I should be concerned about, or if there's  
4 anything -- if a customer ordered an extremely  
5 large volume of something that would have been  
6 a -- not a typical order, I would be able to see  
7 that, and maybe decide that someone from our team  
8 needed to do some additional due diligence.

9 Q How often do you look at a suspicious  
10 order report and make a determination that  
11 something -- some additional diligence is  
12 warranted?

13 A I look at them probably every day, every  
14 other day. I mean, I look at them very  
15 frequently, but rarely do I find anything that --  
16 of concern in those.

17 Q Does that mean that you rarely have  
18 concerns about your customers, or -- is that what  
19 you're saying, you rarely have concerns about your  
20 customers?

21 A No, it means that rarely do I find any  
22 of those orders to be concerning. We do other due  
23 diligence of our customers that that due  
24 diligence -- because we're looking and knowing our

1 customer and conducting the due diligence of our  
2 customer, that we find additional red flags that  
3 are not borne out in a suspicious order report.

4 Q So -- so is the suspicious order report  
5 that you get every day, do you consider that a  
6 useful tool for detecting potential diversion?

7 A I do not.

8 Q What other tools do you consider useful  
9 in detecting diversion?

10 A The tools that we use are things like we  
11 get detailed questionnaires completed by the  
12 customer that might -- depending upon their  
13 responses to the questions in there, may be of a  
14 concern and help us identify something. Asking  
15 the customer to provide dispensing data to us, and  
16 we look at that dispensing data, and that would  
17 provide some additional information. Looking at  
18 purchase history of that customer. Looking on the  
19 Board of Pharmacy website for sanctions for that  
20 customer provides us useful information.

21 Q So, Mr. Boggs, I'm going to show you  
22 what I will mark here as Exhibit 47. This is  
23 Bates No. MCKMDL00616425.

24 MR. STANNER: Here's some copies for

1 counsel. I can put it on the ELMO.

2 It's a native -- it's not on there --

3 MS. MONAGHAN: It's a native and the

4 Bates number is --

5 MR. STANNER: MCKMDL00616425.

6 (Plaintiffs' Exhibit No. 47 was

7 marked for identification.)

8 BY MR. STANNER:

9 Q Mr. Boggs, looking here at Exhibit 47,  
10 does this look familiar to you?

11 A It does.

12 Q What does it look like?

13 A It's a suspicious order report, in this  
14 particular case for the New Castle distribution  
15 center of McKesson's.

16 Q Okay. And can you just -- I'm just  
17 going to direct your attention just to the very  
18 first line on this report. It says -- it's the  
19 line that begins with right under "DEA Number," it  
20 says [REDACTED]

21 Do you see that?

22 A I do.

23 Q Okay. Can you please explain what this  
24 line on this report says?

1           A     That's the DEA number specific to that  
2     customer.

3           Q     Okay. And reading across, can you tell  
4     us what information is contained on the first line  
5     for that customer?

6           A     It's their customer name, and in this  
7     case it's the Veterans Affairs Administration's  
8     medical center in Cleveland in their inpatient.

9           Q     Okay. And if you could just continue  
10    and just go through the columns, tell us what it  
11    says.

12          A     Located in -- in the state of Ohio. The  
13    next column is the transaction date for when this  
14    particular customer placed this order. The next  
15    column is the date in which this was reported to  
16    the DEA. The next column is the NDC number, which  
17    identifies the specific product that they ordered.  
18    The material number is an internal identification  
19    number that McKesson uses to identify that  
20    material.

21                   The next is a brief description of that  
22    particular product that the customer was ordering,  
23    and in this case, I believe it's buprenorphine  
24    with naloxone, 30-count bottle, and the base code

1 of 9064. The quantity that they're ordering was  
2 20 of individual -- or 30, I'm sorry, individual  
3 bottles with that base code. And the next column  
4 is the number of bottles that were shipped for  
5 that order, and in this case zero. So nothing was  
6 shipped.

7 The government sequence number is a  
8 unique identifier number that the DEA uses in  
9 conjunction with the DEA number when they put this  
10 information into their system. And then the last  
11 number is -- of 87 -- or 8772 is the DC number for  
12 the New Castle facility in Ohio --

13 Q Okay. So I --

14 A -- in Pennsylvania.

15 Q I want to go back to the original order  
16 quantity. I believe what you said was that the  
17 number was 30. Is that what you meant to say,  
18 Mr. Boggs?

19 A I was looking at a different line item,  
20 but you're correct, yes, it's 40, and not -- on  
21 the very first line.

22 Q So what does that mean, 40 -- what does  
23 the 40 mean in that context?

24 A It means 40 -- excuse me, 40 of the

1 material that they're ordering, so in this case  
2 it's buprenorphine/naloxone, dosage unit 30. So  
3 it would be 40 of each of those 30.

4 Q Okay. And then the column to the right  
5 of that says "Transaction quantity," and tell --  
6 tell me again what that means.

7 A It's zero. That's how much of -- they  
8 ordered 40, nothing -- zero was shipped.

9 Q Okay. This order that you've just  
10 described, 40 doses of buprenorphine with naloxone  
11 for the VA Medical Center, is that a suspicious  
12 order under the regulation?

13 A It is.

14 Q What did McKesson do with that?

15 A Reported it to the DEA.

16 Q Was it shipped?

17 A It was not.

18 Q When you look at that order, do you --  
19 do you -- does that give you some concern that the  
20 VA Medical Center was going to divert that  
21 buprenorphine with -- with naloxone?

22 A No, it does not.

23 Q Would you do due diligence on the VA  
24 Medical Center in Cleveland because of this order

1     that they placed for buprenorphine with naloxone?

2             A     Not because of this order, no.

3             Q     If a customer -- any of the customers on  
4     this list, for example -- well, let me start by  
5     saying, as you look at this report here, were any  
6     of the orders on this -- do any of the orders on  
7     this list jump out at you now as suspicious in the  
8     lay sense of the term?

9             A     They do not.

10            Q     As you look at this chart, are you able  
11    to tell whether or not any of these entities --  
12    these customers are engaged in or facilitating  
13    diversion?

14            A     Not from this chart, no, or this report.

15            Q     Would you do due diligence around any of  
16    these customers because they appear on this  
17    suspicious order report?

18            A     Not based on what I'm seeing on this  
19    particular chart. There may be a circumstance  
20    where I would see something where on the quantity  
21    ordered would be an extremely large quantity, and  
22    I might be familiar with the customer and that  
23    seems very odd, I might would do something with  
24    that. But generally what we normally see on these

1 would not.

2 Q So if -- if this report is -- does not  
3 trigger diligence of these customers, what does  
4 trigger diligence of these customers?

5 A What triggers diligence within McKesson  
6 in our Controlled Substance Monitoring Program, it  
7 starts with determining whether or not McKesson --  
8 a prospective new customer, whether or not we feel  
9 comfortable enough with that new customer's  
10 business model and their due diligence themselves  
11 and their corresponding responsibility, whether or  
12 not we will initially ship to them in the first  
13 place. And that doesn't always happen. Some we  
14 deny onboarding them as a customer for controlled  
15 substances.

16 The other things that may come up is if  
17 a customer asked for a threshold change request to  
18 increase their base codes for a particular  
19 product, under our program, not only do we  
20 evaluate the merits of the inquiries, but we take  
21 that opportunity to refresh our due diligence of  
22 the customer each and every time.

23 We also have situations such as what we  
24 call an event trigger. If we receive a subpoena

1 from a government agency or an inquiry from a  
2 government agency, that would trigger another  
3 due -- that would trigger a due diligence review  
4 of that customer.

5 Q So these orders that you've just looked  
6 at here in Exhibit 47, what would have to happen  
7 for any one of these orders to be shipped to that  
8 customer?

9 A In order for it to be shipped, we would  
10 have to do some additional due diligence review  
11 before we would ship that order, or at the begin  
12 -- at the beginning of the month, the customer's  
13 thresholds would start anew and the customer would  
14 be able to order again at that point in time.

15 Q So but you just -- you just said that  
16 you don't do due diligence based on this report.  
17 So what would hap- -- how would you do some due  
18 diligence?

19 A Like I said, if they submitted a  
20 threshold change request to increase it because --  
21 you know, if the customer gets a report -- or gets  
22 a notice that their order was not shipped, and  
23 that in that notice it said that they would have  
24 exceeded their monthly thresholds, if the customer

1 decides to request an increase as a result of the  
2 fact that we did not ship, then that would trigger  
3 us to do a due diligence review of that customer.

4 Q So, again, going back just to the first  
5 entry here, the VA Medical Center in Cleveland,  
6 when they did not receive this buprenorphine, is  
7 it your testimony that they might contact McKesson  
8 and ask for a threshold change?

9 A They might, yes.

10 Q And if they were to do that, would that  
11 trigger diligence?

12 A Yes, it would.

13 Q Okay. So you were asked a number of  
14 questions earlier -- well, let me just ask,  
15 Mr. Boggs, are you aware that for some period of  
16 time McKesson stopped making automated suspicious  
17 order reports like this one to the Drug  
18 Enforcement Administration?

19 MR. SATIN: Objection pursuant to Touhy  
20 to the extent you're going to provide information  
21 based on your time at the DEA, including official  
22 non-public information.

23 THE WITNESS: Well, since my time at  
24 McKesson, I know that they did not make some

1 reports at that -- during periods of time.

2 BY MR. STANNER:

3 Q And do you believe that the failure to  
4 report contributed to the opioid crisis?

5 A I don't, because the order may very well  
6 have been blocked and not shipped. It doesn't  
7 mean it was reported or not reported, but the  
8 order may have been blocked, and McKesson was  
9 blocking orders for quite some time.

10 Q Okay. How long have you been at  
11 McKesson now, Mr. Boggs?

12 A A little over five years.

13 Q Have you seen anything in your time at  
14 McKesson to make you think that McKesson is  
15 responsible for the opioid crisis?

16 A I have not.

17 Q Do you think that McKesson takes its --  
18 its obligations -- its regulatory obligations  
19 seriously?

20 A I do. In fact, if I didn't think they  
21 did, I wouldn't work for them.

22 Q Well, when you went to work for them,  
23 did you have -- was it -- was it your impression  
24 that they took the regulatory obligations

1 seriously then?

2 A It was my understanding that they -- I  
3 mean they hired me. That was an example that they  
4 were taking their regulatory obligations  
5 seriously. People that I had talked to during the  
6 consulting periods of time, I was -- the  
7 impression I had was that McKesson took the  
8 regulatory obligations seriously.

9 Q When you say the people that you -- took  
10 their regulatory obligations seriously, who -- who  
11 do you have in mind? Did you -- did you ever  
12 meet, for example, Don Walker?

13 A I did.

14 Q What were your impressions of Don  
15 Walker?

16 MR. RAFFERTY: Objection.

17 THE WITNESS: That he was attempting to  
18 do the right thing and he took his regulatory  
19 obligations seriously. He hired me for  
20 consulting, and then ultimately hired me in the  
21 role that I'm in now.

22 BY MR. STANNER:

23 Q Have you ever seen anything in your time  
24 at McKesson that makes you think that McKesson

1 would prioritize profits over following the law?

2 A I have not.

3 Q In your time at McKesson, have you ever  
4 suggested terminating a customer and had the  
5 company push back on that?

6 A I have not. They -- I have unilateral  
7 authority to terminate a customer regardless of  
8 any financial gain or loss to the company or  
9 financial gain or loss to the -- to the customer.  
10 And since I've been at McKesson, our program has  
11 probably stopped shipping to 250-some-odd  
12 customers.

13 Q You -- you were asked some questions  
14 earlier about McKesson's algorithm. How long did  
15 it take to develop McKesson's current algorithm  
16 for thresholds?

17 A Taken --

18 MR. RAFFERTY: Objection.

19 THE WITNESS: It's taken years.

20 BY MR. STANNER:

21 Q Can you be more specific?

22 A We've -- I believe it was probably  
23 sometime in either late 2014 or early 2015, or  
24 whatever, when we engaged the Analysis Group, an

1 outside third party, to come in and conduct a  
2 review of the data. We met with them numerous  
3 times. Continue to meet with them. We  
4 established some initial algorithms, recognized  
5 that there needed to be some modifications,  
6 continued to tweak and adjust those modifications.  
7 And we are still in -- looking at that for  
8 different segments within the company. It's taken  
9 years.

10 Q Why -- why does it take years to develop  
11 an algorithm like that?

12 MR. RAFFERTY: Objection.

13 BY MR. STANNER:

14 Q Mr. Boggs, did you personally -- were  
15 you personally involved in working with the team  
16 to build the algorithm?

17 A I was.

18 Q Okay. Why did it take years to develop?

19 A Even though you can have statistically  
20 sound or recognized within the mathematical  
21 community of sound, acceptable practice of  
22 methodologies, those methodologies are not one  
23 size fits all. You have various different markets  
24 or different customers. You have hospitals, you

1 have practitioners, you have long-term care  
2 facilities, you have -- all of those are very  
3 different from one another. And so when you try  
4 to establish that and come up with a methodology  
5 or threshold algorithms, it's very challenging.

6 It's also -- we see differences around  
7 the United States, different -- different  
8 prescribing patterns by the doctors in and around  
9 the States, so it's -- it's very difficult to do.

10 Q So, I want you to just focus  
11 specifically on retail pharmacies, not -- not  
12 necessarily hospitals. I take your point. Not  
13 necessarily hospitals.

14 Focusing just on pharmacies, why not  
15 just set a threshold of 8,000 or 20,000 or 50,000?

16 A Because there's various -- different  
17 businesses require different quantities to meet  
18 their legitimate patients. You have some  
19 customers also that are part of a buying group,  
20 and they self-warehouse, and so they might  
21 purchase certain products through their  
22 self-warehouse, but then they purchase some from  
23 McKesson.

24 Some customers obviously are sound

1 business folks. They shop around. They purchase  
2 some stuff from one distributor; they purchase  
3 some stuff from another distributor.

4 So those are just some examples.

5 Q You were -- are you familiar with  
6 Franklin Pharmacy in Warren, Ohio?

7 A The one we spoke about earlier, yes.

8 Q Do you know what happened to Franklin  
9 Pharmacy in Warren, Ohio?

10 A I terminated the sale of controlled  
11 substances to that pharmacy.

12 Q When did that happen?

13 A I have to look at the exhibit here.

14 I believe it was sometime between the  
15 end of May of 2015 and the first week of August of  
16 2015.

17 Q Why did you terminate Franklin Pharmacy?

18 A Based upon our due diligence review of  
19 that customer, we had concerns that they were not  
20 exercising their corresponding responsibility, and  
21 therefore we decided not to ship controlled  
22 substances to them.

23 Q Do you think Franklin Pharmacy was a  
24 pill mill?

1           A     I don't think it -- I wouldn't classify  
2     it as a pill mill, no.

3           Q     Do you know if Franklin Pharmacy had  
4     active licenses with the DEA or the Ohio Board of  
5     Pharmacy?

6           A     They did.

7           Q     So what were your concerns? When you  
8     say you had concerns, what were your concerns?

9           A     Our concern was that they were filling  
10    some products or prescriptions that would be  
11    called the Holy Trinity, which is indicative of  
12    diversion, that they could not explain. Some of  
13    their sales, some of their patients, the radius  
14    that they were servicing was concerning. We  
15    just -- we had just concerns that they were not  
16    being prudent when presented with a prescription  
17    for a controlled substance.

18          Q     Do you know how long the diligence  
19    review took for Franklin Pharmacy?

20          A     I believe it took a couple of weeks. I  
21    believe. I'm not sure.

22          Q     Do you conduct site visits as part of  
23    your diligence program?

24          A     That is part of our due diligence

1 program, yes.

2 Q Is it an important part of the program?

3 A It's -- it's a component of it. It --  
4 it can be important, but it's a -- it's a  
5 component of the program.

6 Q Would you say it's the most important  
7 component in your diligence program?

8 A No.

9 Q Why not?

10 A We can identify red flags sometimes  
11 through statistical analysis or we can ask the  
12 customer to provide us dispensing data. Our  
13 review may find that there is a board sanction  
14 from the Board of Pharmacy that we can do online.  
15 We don't need to do a site visit to -- to obtain  
16 that. In fact, a site visit we wouldn't be able  
17 to get that.

18 We may find something on the internet  
19 that -- that would cause us concern. There's  
20 other ways and tools in which we use to exercise  
21 our due diligence.

22 Q So, Mr. Boggs, I -- I want to just  
23 quickly go back to Exhibit 47 again, the  
24 suspicious order report. If you don't believe

1     that these orders are likely to be diverted, why  
2     do you block them?

3             A     We block them because it's our  
4     understanding that that's the expectation of the  
5     Drug Enforcement Administration. It's a way for  
6     us to have a customer, if they need something  
7     above their thresholds, to provide us with a  
8     threshold change request and a justification for  
9     why they might need more. It gives us an  
10    opportunity to do additional due diligence of that  
11    customer.

12                MR. STANNER: Nothing further.

13                (A discussion was held off the record.)

14                THE VIDEOGRAPHER: You want to go off  
15    the record?

16                MR. RAFFERTY: Let's Go off the record,  
17    yeah.

18                THE VIDEOGRAPHER: The time is 5:58 p.m.  
19    We're going off the record.

20                (Recess.)

21                THE VIDEOGRAPHER: The time is 6:07 p.m.  
22    We're back on the record.

23                MR. RAFFERTY: Before I get started on  
24    behalf of plaintiffs, does anyone else on the line

1 or present have any questions of the witness?

2 And by virtue of everyone's silence,  
3 I'll proceed.

4 REDIRECT EXAMINATION

5 BY MR. HAWAL:

6 Q Mr. Boggs, how many other former DEA  
7 representatives or agents are now employed at  
8 McKesson besides yourself, if you can estimate?

9 A About six or seven.

10 Q Does that include former DEA attorneys  
11 as well as agents?

12 A It did not, but there -- we -- there's  
13 one.

14 Q Just one. And before 2013, do you know  
15 whether any DEA agents were employed at McKesson,  
16 former DEA agents?

17 A There's a -- was a diversion  
18 investigator, not a DEA agent, that was employed  
19 by --

20 Q Just one?

21 A -- prior to my arrival, yes.

22 Q Just one. Okay.

23 Well, I heard you say that a company  
24 like McKesson cannot prevent all diversion. Is

1     that -- is that correct?

2             A     That's correct.

3             Q     Would you agree, though, that  
4     wholesalers like McKesson can play an important  
5     role in preventing diversion?

6             A     I would.

7             Q     Now, you were asked, and I believe you  
8     testified, that since you've been at McKesson,  
9     you've never seen anything to suggest that -- that  
10    McKesson contributed to the opioid epidemic.

11            Is that a fair statement of what you  
12    testified to?

13            A     It is.

14            Q     I want to take you back to Exhibit 38.

15                   MR. HAWAL: If Evan can bring it up.

16    BY MR. HAWAL:

17            Q     Which is the November 4th, 2014 letter  
18    from the DEA to Geoffrey Hobart of Covington &  
19    Burling. Do you recall that Mr. Rafferty asked  
20    you about this letter?

21            A     I believe so, yes.

22            Q     In fact, Covington & Burling is the law  
23    firm that represents McKesson and has its counsel  
24    seated directly to your left representing you in

1     this deposition?

2                   MR. STANNER:   Objection to the form.

3                   THE WITNESS:   That's correct.

4     BY MR. HAWAL:

5           Q     And according to this DEA letter, in the  
6     first paragraph it says:  "As a result of  
7     McKesson's failure to maintain effective controls  
8     against diversion of particular controlled  
9     substances and to design and operate a system to  
10    disclose to the registrants suspicious orders of  
11    controlled substances," that this administrative  
12    action was being taken against McKesson.

13                   That's the conclusion of the DEA?

14                   MR. STANNER:   Object to the form.

15                   THE WITNESS:   I believe that's the case,  
16    yes.

17     BY MR. HAWAL:

18           Q     And you disagree with that?

19           A     With what?

20           Q     That McKesson had failed to maintain  
21    effective controls against diversion of particular  
22    controlled substances and failed to design and  
23    operate a system to disclose to the registrant  
24    suspicious orders of controlled substances.  Do

1     you disagree with that?

2             A     I don't, no.

3             Q     Let me take you to page 3 where certain  
4     examples are being provided.

5                     For example, in the first paragraph, it  
6     talks about McKesson's distribution center in  
7     Livonia, Michigan, had reported no suspicious  
8     orders for approximately five years after  
9     McKesson's settlement with the DOJ in 2008, and  
10    remained silent even as it supplied 26 pharmacies  
11    that were utilized in a drug trafficking  
12    conspiracy.

13                    Do you see that?

14             A     I do.

15             Q     Do you believe that that contributed to  
16    the opioid epidemic or crisis?

17                    MR. STANNER:  Objection to form.  
18    Speculation.

19    BY MR. HAWAL:

20             Q     On a probability basis?

21                    MR. STANNER:  Same objection.

22                    THE WITNESS:  That criminal conspiracy  
23    may have contributed to it.

24    BY MR. HAWAL:

1           Q     Well, do you believe that McKesson  
2     providing opioid -- opioids to those pharmacies  
3     and submitting no suspicious order reports  
4     contributed to the opioid crisis?

5           MR. STANNER:  Objection to the form.  
6     Speculation, assumes facts.

7           THE WITNESS:  No.

8     BY MR. HAWAL:

9           Q     It goes on to refer to Preferred Care  
10    Pharmacy, for example, went from ordering less  
11    than 4,000 dosage units of hydrocodone products in  
12    March and April of 2010 to regularly ordering  
13    16,000 dosage units a month in August 2010, to  
14    regularly ordering more than 20,000 dosage units a  
15    month in 2011.

16           Do you agree that that is of concern?

17           MR. STANNER:  Same objections.

18           THE WITNESS:  It can be, yes.

19    BY MR. HAWAL:

20           Q     Well, do you -- as you sit here and you  
21    see that, is that a concern to you as a former DEA  
22    agent and someone in charge of McKesson's  
23    anti-diversion efforts?

24           MR. STANNER:  Same objection.

1 THE WITNESS: It can be a concern, yes.

2 BY MR. HAWAL:

3 Q Well, I'm not asking you if it can be.  
4 I'm asking you if it is as you sit here and read  
5 this.

6 MR. STANNER: Same objections.

7 THE WITNESS: It's a -- would be a  
8 concern that we would want to find out more  
9 information about it.

10 BY MR. HAWAL:

11 Q Did you ever make any determination of  
12 what McKesson did about this in terms of  
13 investigating this allegation?

14 A Not on this specific one, no.

15 Q And then in the second -- next paragraph  
16 down, it says: "McKesson's systemic failures were  
17 also evident at its distribution center in  
18 Washington Court House where McKesson did not  
19 report any orders as suspicious for years after  
20 the 2008 settlement with DOJ and DEA. McKesson's  
21 regional director of Regulatory Affairs told DEA  
22 investigators that he did not know what a  
23 suspicious order was."

24 Did I read that correctly?

1           A       You did.

2           Q       Does that concern you that a regional  
3       director of Regulatory Affairs would have told the  
4       DEA that he does not know what a suspicious order  
5       was?

6                   MR. STANNER:   Objection to form.

7           THE WITNESS:   That would cause me a  
8       concern, yes.

9       BY MR. HAWAL:

10          Q       That's -- that would be incomprehensible  
11       to you, wouldn't it?

12                  MR. STANNER:   Same objection.

13          THE WITNESS:   It would be something of  
14       concern, yes.

15       BY MR. HAWAL:

16          Q       All right.   And then if we go farther  
17       down, it says:   "McKesson WCH," Washington Court  
18       House, "did not report anything suspicious about  
19       Community Drug of Manchester, Kentucky, a pharmacy  
20       located in a town of less than 1,000 adult  
21       residents, ordering 20,000 to almost 50,000 dosage  
22       units of oxycodone products on a monthly basis in  
23       2011."

24                  Another concern?

1 MR. STANNER: Same objections.

2 THE WITNESS: It would be a concern,  
3 yes.

4 BY MR. HAWAL:

5 Q And then it goes on to say: "Even after  
6 McKesson Washington Court House was aware that  
7 this pharmacy was under investigation, it  
8 continued to supply it with controlled substances  
9 while apologizing for having to reduce thresholds  
10 and promising to," quote, "bump up," close quote,  
11 "those thresholds as soon as they could justify  
12 doing so."

13 Sir, is that an incomprehensible concern  
14 as you sit here and see that?

15 MR. STANNER: Same objections.

16 THE WITNESS: It's definitely a concern,  
17 yes.

18 BY MR. HAWAL:

19 Q And would that indicate to you that  
20 McKesson was contributing to the opioid crisis  
21 with that kind of evidence?

22 MR. STANNER: Same objections. Use of  
23 the word "evidence."

24 THE WITNESS: Not on the surface without

1 additional facts and circumstances, no.

2 BY MR. HAWAL:

3 Q And what would be the -- what would be  
4 the legitimate business rationale for bumping up  
5 thresholds as soon as they could justify doing so  
6 in the face of what is stated here? Can you come  
7 up with one?

8 A Not off --

9 MR. STANNER: Objection -- objection --

10 BY MR. HAWAL:

11 Q I'm sorry, I didn't hear you.

12 A Not off the top of my head, I can't, no.

13 Q "In September of 2012, federal and state  
14 law enforcement officers executed a search warrant  
15 on Community Drug as part of an investigation that  
16 ultimately resulted in the criminal conviction of  
17 the lead pharmacist and his wife. Days after that  
18 search warrant was executed, and covered by local  
19 television news outlets, McKesson Washington Court  
20 House contacted Community Drug telling it that it  
21 would be seeking a," quote, "pretty sizable  
22 increase," close quote, "in oxycodone and  
23 hydrocodone thresholds for this store."

24 What does that tell you about McKesson's

1 diligence and its willingness to deviate from its  
2 promises that it made to the Department of Justice  
3 and the DEA in 2008 to clean up its act as it  
4 related to suspicious order reporting?

5 MR. STANNER: Same objections. Assumes  
6 facts, speculative, compound.

7 THE WITNESS: I can't tell from this  
8 whether or not McKesson was aware of the -- the  
9 facts that you just spoke about.

10 BY MR. HAWAL:

11 Q You're aware, as we discussed earlier,  
12 that McKesson ended up paying a \$150 million fine  
13 or penalty as a result of these types of  
14 administrative proceedings that were initiated  
15 against it by the Department of Justice and the  
16 DEA --

17 MR. STANNER: Objection to form.

18 BY MR. HAWAL:

19 Q -- right?

20 MR. STANNER: Objection to form.

21 THE WITNESS: The \$150 million fine  
22 would be associated for not reporting suspicious  
23 orders.

24 BY MR. HAWAL:

1           Q     And that's exactly what it wasn't doing  
2     in these examples, right?

3                     MR. STANNER:   Same objection.

4                     THE WITNESS:   According to the document,  
5     that's correct, yes.

6     BY MR. HAWAL:

7           Q     Which you have no basis to refute as you  
8     sit here today, right?

9           A     I do not.

10                    MR. STANNER:   Same objections.

11     BY MR. HAWAL:

12           Q     It goes on to say:  "In that same month,  
13     McKesson Washington Court House, its blind eye for  
14     suspicious ordering was again apparent when it set  
15     a monthly threshold of 112,000 dosage units of  
16     hydrocodone products for Family Discount Pharmacy,  
17     one of three pharmacies located in Mount Gay, West  
18     Virginia, with an adult population of less than  
19     1500.  Even when Family Discount Pharmacy exceeded  
20     that extraordinary threshold, making this rural  
21     pharmacy one of the top purchasers of hydrocodone  
22     in the state, no orders were reported as  
23     suspicious."

24                    Sir, are you still willing to sit here

1 and testify that, based upon your knowledge from  
2 the time you've been at McKesson, that McKesson  
3 has not contributed to the opioid crisis in the  
4 United States?

5 A I am. As far as I know, Family Discount  
6 is still in business today, still has a DEA  
7 registration. We term- -- I terminated sales of  
8 controlled substances to them.

9 Q Why?

10 A Because of conversations with the owner,  
11 that we felt that they were not exercising their  
12 corresponding responsibility.

13 But aside from the fact that the  
14 government obviously was aware of that, as far as  
15 I know today, that that pharmacy is still in  
16 business, has never had an order to show cause,  
17 has never had a state sanction against them as we  
18 sit here today.

19 Q And what about these other pharmacies  
20 that are cited in this letter, are they still in  
21 business and being serviced by McKesson?

22 MR. STANNER: Objection. Calls for  
23 speculation.

24 THE WITNESS: I -- I'd have to do some

1 research to see that. I don't know if --

2 BY MR. HAWAL:

3 Q Well, as we sit here, do you know if the  
4 individual pharmacies, for example, Alexander's  
5 Pharmacy in Dracut, Massachusetts, is still in  
6 business and serviced by McKesson?

7 A I don't know that one specifically. The  
8 Peoples Pharmacy that they speak out in Detroit,  
9 we stopped shipping to them, and as far as I know,  
10 they're still in -- they were still in business  
11 for several months, if not still in business.

12 Q So if diversion occurs, it's your  
13 position that it's the pharmacy's fault, not the  
14 distributor's fault, right?

15 MR. STANNER: Objection to the form.  
16 Misstates.

17 BY MR. HAWAL:

18 Q Is that your testimony?

19 MR. STANNER: Same objection.

20 THE WITNESS: Well, I think we were  
21 assuming that on some of these that diversion was  
22 occurring when we don't even know that there's not  
23 evidence in here that diversion was actually  
24 occurring. In some -- some of them there is, and

1     some of them there's no information that diversion  
2     has ever occurred at these locations.

3     BY MR. HAWAL:

4             Q     And -- and to your knowledge, no one at  
5     McKesson has ever investigated these allegations  
6     to determine whether diversion actually occurred  
7     or didn't occur. Is that your understanding?

8             MR. STANNER: Object to the form. Calls  
9     for speculation, misstates.

10            THE WITNESS: I don't know that we did  
11     or didn't on some of these. I know some of them  
12     we did because I know personally that I terminated  
13     Peoples Pharmacy, I terminated Family Discount  
14     Pharmacy.

15     BY MR. HAWAL:

16            Q     Well, you also terminated Franklin  
17     Pharmacy. You talked about that.

18            A     In -- in Ohio, yes, I did.

19            Q     You terminated them in 2015, correct?

20            A     I -- I'd have to look specifically which  
21     one.

22            Q     I thought that's --

23            A     The Franklin Pharmacy in Ohio would have  
24     been around 2015.

1           Q     -- Warren. And that would have been  
2     eight years after it was onboarded in 2007?

3           A     That sounds about right, yes.

4           Q     Mm-hmm. And as Mr. Rafferty went  
5     through Exhibit 43, in 2009 -- in 2009, they had a  
6     threshold of 50,000 for oxycodone, 35,000 for  
7     hydrocodone on a monthly basis, and wanting an  
8     increase of 20,000 and 10,000, respectively, to be  
9     made a permanent increase.

10                     And you made the determination in 2015  
11     that this was indicative of potential diversion,  
12     and you felt that they should be terminated,  
13     right?

14                     MR. STANNER: Objection to the form.

15                     THE WITNESS: Right.

16     BY MR. HAWAL:

17           Q     It took seven years -- well, strike  
18     that.

19                     You made the determination that it was  
20     listed as the largest dispensing pharmacy for  
21     oxycodone doses and the second largest dispenser  
22     of oxycodone of 30 milligram and fourth highest  
23     dispenser of hydrocodone doses, and made a  
24     determination that more due diligence was required

1 and they should be terminated as a result of that  
2 due diligence, right?

3 MR. STANNER: Objection to form.

4 THE WITNESS: That's correct.

5 BY MR. HAWAL:

6 Q And those same quantities of pills had  
7 been flowing into that pharmacy from McKesson  
8 since 2009. Correct?

9 MR. STANNER: Objection to form.

10 THE WITNESS: I think --

11 MR. SATIN: Objection pursuant to Touhy.

12 THE WITNESS: I think that that is an  
13 example of how challenging and difficult some of  
14 this is. You can go into a pharmacy in one  
15 particular time and not necessarily see anything  
16 that's indicative of either diversion or a  
17 pharmacist that's not exercising their  
18 corresponding responsibility, and then you can go  
19 back there several months later -- it happened in  
20 Family Discount in Mount Gay, West Virginia. We  
21 go into there, we don't necessarily see anything.  
22 We go back there again, follow up, and then we  
23 find something. They may have changed their staff  
24 over that period of time. They may have changed

1     who they are supplying with controlled substances.

2                     The facts and circumstances can change,  
3     and this is just an example of just how  
4     challenging and difficult this is.

5                     MR. HAWAL:   Move to strike as  
6     nonresponsive.

7                     MR. STANNER:   Objection.

8     BY MR. HAWAL:

9             Q     Mr. Boggs, you mentioned that dispensing  
10    data is important.

11            A     It's one of the tools that we use, yes.

12            Q     But even though you are not -- you are  
13    not receiving dispensing data from CVS because  
14    they refuse to provide it, you maintained a  
15    relationship with CVS and didn't demand that they  
16    provide it or they be terminated.   Fair?

17                     MR. STANNER:   Object to the form.   The  
18    use of the word "you," misstates.

19                     THE WITNESS:   I don't know if that --  
20    I'm not -- I don't deal with the national chains,  
21    so I don't know what was said to them, whether or  
22    not something was provided or what -- I don't --  
23    I'm not familiar with that.

24    BY MR. HAWAL:

1           Q     Did you say that suspicious order  
2     reports are not useful to you?

3           A     I have not found them to be particularly  
4     useful.

5           Q     And is that since you've left the DEA or  
6     did you consider them not useful when you were  
7     with the DEA?

8                     MR. SATIN:  Objection pursuant to Touhy.  
9     You may answer so far as it -- it's not based on  
10    information you obtained while you were at the  
11    DEA.

12                    THE WITNESS:  I don't believe that I can  
13    answer that question at this time.

14    BY MR. HAWAL:

15           Q     Well, you can certainly answer the fact  
16    that Mr. Rannazzisi, by virtue of the letters that  
17    he wrote, he considered suspicious order reports  
18    important and valuable, true?

19                    MR. STANNER:  Objection.

20    BY MR. HAWAL:

21           Q     By virtue of what he put in the letters  
22    that you saw, Exhibit 1 and Exhibit 2 or 3.

23                    MR. STANNER:  Objection to the form.

24                    THE WITNESS:  I -- I understand what was

1 in the letters in terms of what he thought about  
2 it, and I would suggest --

3 BY MR. HAWAL:

4 Q It spoke -- spoke for itself.

5 THE REPORTER: You didn't get the rest  
6 out.

7 THE WITNESS: Yeah. I would suggest if  
8 you want to know what he was thinking about that,  
9 you might have to ask him.

10 BY MR. HAWAL:

11 Q Well, it's evident from the letters that  
12 he wrote what he was thinking, true?

13 MR. STANNER: Objection to the form.

14 THE WITNESS: I -- I will take the  
15 letter at face value, yes.

16 BY MR. HAWAL:

17 Q And he was your supervisor, correct?

18 A He was.

19 Q He was the head of the Department of  
20 Diversion Control at the DEA the entire time you  
21 were in that department, true?

22 A He was.

23 Q And in terms of Mr. Rannazzisi's  
24 letters, would -- do you believe it's unusual that

1 he would have to send repetitive letters to  
2 wholesalers to remind them of their obligations  
3 under the Controlled Substances Act and their  
4 obligations to send suspicious order reports to  
5 the DEA if he didn't believe that that was an  
6 important part of their obligation?

7 MR. STANNER: Object to the form.

8 MR. SATIN: Objection pursuant to Touhy,  
9 don't answer that question.

10 BY MR. HAWAL:

11 Q As you sit here today, and based on what  
12 you know and what you've seen in those letters, do  
13 you believe that he would have sent those letters  
14 if he did not have concerns about McKesson's and  
15 other distributors' failures to live up to their  
16 obligations under the Controlled Substances Act?

17 MR. STANNER: Object to the form of the  
18 question.

19 MR. SATIN: Objection pursuant to Touhy  
20 to the extent it still relies -- the answer relies  
21 on the information you obtained at that time when  
22 you were at the DEA.

23 THE WITNESS: I don't believe I can  
24 answer that question at this time.

1 BY MR. HAWAL:

2 Q Well, since you've left the DEA, has --  
3 has Mr. Rannazzisi or any other DEA representative  
4 sent McKesson a letter saying, We don't want your  
5 suspicious order reports, they're of no value to  
6 us? Has that ever happened?

7 A I'm not familiar with any letters that  
8 have that, no.

9 Q If those letters did go to the -- to  
10 McKesson, you would know about it, wouldn't you?

11 MR. STANNER: Object -- object to the  
12 form of the question.

13 BY MR. HAWAL:

14 Q Wouldn't you?

15 A I would hope so, yes.

16 Q Now, you testified that you send  
17 suspicious order reports that -- that you believe  
18 are legitimate suspicious -- represent suspicious  
19 orders to the DEA as well as suspicious order  
20 reports that you don't believe represent or are  
21 suspicious. Is that -- is that your statement --  
22 was that your testimony?

23 A I don't believe that was my testimony at  
24 all.

1           Q     Well, I thought you said that you --  
2     with Exhibit -- I can't remember the number, but  
3     the exhibit that your counsel referenced --

4                     MR. STANNER:   Exhibit 47.

5     BY MR. HAWAL:

6           Q     -- 47, that you sent a suspicious order  
7     report relating to the VA in Cleveland to the DEA,  
8     even though you didn't believe that that was a  
9     suspicious order.

10          A     I believe it was a --

11                     MR. STANNER:   Objection to the form.

12                     THE WITNESS:   -- suspicious customer.

13     BY MR. HAWAL:

14          Q     Oh, okay.   Well, did you believe it was  
15     a suspicious order?

16          A     I believe it was a suspicious order as  
17     that is defined in the regulation, yes.

18          Q     All right.   But you didn't believe that  
19     diversion could be occurring at the VA in  
20     Cleveland?

21          A     Not --

22                     MR. STANNER:   Objection to the form.

23     Misstates the testimony.

24                     THE WITNESS:   Not based on this order,

1 no.

2 BY MR. HAWAL:

3 Q But you were -- you also would send  
4 reports to the DEA that you thought could  
5 represent diversion -- suspicious order reports  
6 that could represent diversion, true?

7 A I --

8 MR. STANNER: Objection to the form.

9 THE WITNESS: I don't believe I said  
10 that at all.

11 BY MR. HAWAL:

12 Q Does McKesson identify any orders which  
13 are based on its due diligence which it actually  
14 believes are illegitimate?

15 MR. STANNER: I'm sorry, Counsel, could  
16 you repeat that question?

17 MR. HAWAL: Yeah.

18 BY MR. HAWAL:

19 Q I mean, does McKesson identify either  
20 for itself or for the DEA orders which are based  
21 on its due diligence which actually confirms to  
22 McKesson that it is engaged -- the customer is  
23 engaged in diversion?

24 MR. STANNER: Object to the form.

1                   THE WITNESS: I think my experience --  
2    if I understand the question correctly, my  
3    experience is, is that what we look at is whether  
4    or not the customer is fulfilling their regulatory  
5    obligations when they receive orders, not  
6    necessarily whether or not we look at a specific  
7    order to determine whether or not diversion was  
8    occurring.

9    BY MR. HAWAL:

10               Q     In any event, wholesalers like McKesson  
11    play an integral part of the efforts at preventing  
12    diversion. True?

13               A     I believe we --

14               MR. STANNER: Objection to form.

15               THE WITNESS: -- play an important part.

16    BY MR. HAWAL:

17               Q     And -- and that is done by assisting the  
18    DEA in identifying pharmacies who are selling high  
19    volumes of opioid pills outside the levels of --  
20    that are expected to be sold by pharmacies of like  
21    size and comparable location?

22               MR. STANNER: Same objection.

23               THE WITNESS: We help the DEA inasmuch  
24    as that we report orders that are unusual size,

1 frequency and pattern, and then the DEA can do  
2 with them whatever they think for investigations.  
3 We also report -- not only that, we report all  
4 transactions that those customers purchase from us  
5 for all Schedule II and Schedule III narcotics  
6 through the ARCOS system.

7 So we have two different types of  
8 reportings that we report to them to help them in  
9 their mission.

10 BY MR. HAWAL:

11 Q And -- and you believe that -- setting  
12 aside your legal obligations as a company, do you  
13 believe that that is the right thing to do as a  
14 corporate citizen in this country?

15 MR. STANNER: Object to the form.

16 THE WITNESS: I believe that it's right  
17 as a -- being a good corporate citizen to provide  
18 the DEA with the regulatory requirements that we  
19 are required to do, and we do.

20 BY MR. HAWAL:

21 Q Well, then -- then why was McKesson not  
22 providing suspicious order reports to the DEA for  
23 a five-year period of time after it promised to do  
24 so in 2008 at so many different distribution

1 centers across the country?

2 MR. STANNER: Objection. Calls for  
3 speculation.

4 THE WITNESS: It's my understanding they  
5 were focused on customers that were suspicious and  
6 reporting those customers to -- to the DEA, that  
7 that was what the DEA was interested in.

8 BY MR. HAWAL:

9 Q What are you -- are you -- are you  
10 telling us what you understood as a DEA agent at  
11 that time? Where are -- where are you getting  
12 that information from?

13 MR. STANNER: Objection. Counsel,  
14 you've asked him to speculate.

15 MR. HAWAL: Well, I understand, but  
16 he's -- he's now telling -- I think he's giving us  
17 information in violation of Touhy without his  
18 counsel even objecting to it.

19 MR. SATIN: Well, then maybe -- I don't  
20 believe so. I thought your question was asking  
21 for him based on his time at McKesson to be  
22 evaluating what he understood McKesson was doing  
23 during those years that he learned in the course  
24 of his work at McKesson.

1                   But I will certainly advise you,  
2   Mr. Boggs, not to disclose information that's  
3   non-public and official that you learned while you  
4   were at the DEA and -- and to make that clear.

5                   MR. HAWAL:   Okay.   P -- P-1431, please.

6                   (Plaintiffs' Exhibit No. 48 was  
7                   marked for identification.)

8   BY MR. HAWAL:

9                   Q     Sir, I'm handing you another letter from  
10   the Department of Justice to another lawyer at  
11   your lawyer's law firm, Covington & Burling, dated  
12   March 20th, 2004 -- March 20, 2014.   I'm sorry.

13                   Take a look at this letter.   And doesn't  
14   it prominently reiterate that the DEA was not  
15   looking for suspicious customers; it was looking  
16   for suspicious orders?

17                   It says --

18                   MR. STANNER:   Objection to the form.

19   BY MR. HAWAL:

20                   Q     It says:   "I cannot accept that the CSMP  
21   implemented by McKesson after the 2008 settlement  
22   was designed to identify suspicious customers.   It  
23   is my informed belief that such a contention is  
24   more rationalization than reality."

1                   And then he goes on to quote from the  
2                   obligations that McKesson assumed in 2008, when it  
3                   settled with the DEA and DOJ, where it repeatedly  
4                   referenced the obligation to report suspicious  
5                   orders, and nowhere does it relate to suspicious  
6                   customers.

7                   Is that -- is that accurate, sir?

8                   MR. STANNER: Objection to the form. Is  
9                   that an accurate reading of the letter or --

10                  BY MR. HAWAL:

11                  Q       Is it an accurate reading of the letter  
12                   and is it an accurate fact, as you understand it?

13                  MR. STANNER: Objection. Compound.

14                  MR. SATIN: And, well, to the fact,  
15                   objection pursuant to Touhy.

16                  MR. HAWAL: Well, this is a 2014  
17                   document, sir.

18                  MR. SATIN: You're asking about events  
19                   that happened in 2008.

20                  BY MR. HAWAL:

21                  Q       Is it your -- I mean, does this letter  
22                   clarify your prior testimony that in fact the DEA  
23                   was looking for the reporting of suspicious orders  
24                   and not suspicious customers?

1 MR. STANNER: Objection to the form,  
2 "clarify."

3 THE WITNESS: I believe that that's what  
4 the letter says, yes.

5 BY MR. HAWAL:

6 Q And do you have any documents from the  
7 DEA indicating otherwise?

8 MR. STANNER: Objection to form.

9 THE WITNESS: Not to my knowledge, no.

10 BY MR. HAWAL:

11 Q And on page 3 of the letter, on the  
12 second paragraph, it says: "In fact, the idea  
13 that a distributor would implement a CSMP that  
14 concentrates on suspicious customers rather than  
15 suspicious orders is contrary to the letter and  
16 spirit of those provisions of the act and  
17 regulations aimed at curbing diversion."

18 Is that what it says?

19 A That's what it says, yes.

20 Q Was that your understanding when you  
21 were with the DEA as well?

22 MR. STANNER: Objection.

23 MR. SATIN: Objection. Touhy.

24 THE WITNESS: I don't believe I can

1 answer that question at this time.

2 BY MR. HAWAL:

3 Q Were any of the answers that you gave in  
4 your direct examination by your counsel informed  
5 by information that you gained as a DEA  
6 representative?

7 MR. STANNER: Objection to the form of  
8 the question.

9 THE WITNESS: Not that I recall, no.

10 MR. STANNER: Can I ask how long we've  
11 been on the record?

12 THE VIDEOGRAPHER: 30 minutes.

13 MR. SATIN: And I think the last  
14 question asked about direct examination by his  
15 counsel. I never asked him any questions.

16 MR. HAWAL: Yes.

17 MR. SATIN: You're asking about the  
18 direct examination that counsel for McKesson made.

19 MR. HAWAL: Well, Counsel -- yeah,  
20 Counsel --

21 BY MR. HAWAL:

22 Q Let me ask you this, Mr. Boggs. In your  
23 preparation sessions for this deposition, were you  
24 with counsel for McKesson?

1           A       I was.

2           Q       Okay.

3                   (Plaintiffs' Exhibit No. 49 was  
4                   marked for identification.)

5   BY MR. HAWAL:

6           Q       I'm going to hand you what's been marked  
7   as Exhibit 49, which is some e-mails in two  
8   thousand -- March of 2014, when you were with --  
9   an employee of McKesson.

10                   And if you look to page 2 of this e-mail  
11   chain, from David Graziano to Stephen Schmidt, he  
12   says: "Melanie called me this morning. She  
13   ordered 6 x 100 bottles of oxy and received 10 x  
14   100. This is kind of a slap in the face in our  
15   conversation -- conversation efforts of threshold  
16   rationale and change request procedures."

17                   What would you expect McKesson to do if  
18   they erroneously shipped more oxycodone to a  
19   customer than the customer ordered? Would you --

20                   MR. STANNER: Objection.

21   BY MR. HAWAL:

22           Q       What would you expect McKesson to do?

23                   MR. STANNER: Objection to form.

24                   THE WITNESS: They could do a couple of

1 different things. They can --

2 BY MR. HAWAL:

3 Q Well, what would be appropriate for them  
4 to do?

5 A Either work with the customer to find  
6 out if there was additional quantities that they  
7 needed, or whether or not they were going to  
8 return the quantities over -- over the order.

9 Q Well, would it be appropriate for  
10 McKesson to send someone to pick up the erroneous  
11 order that exceeded the amount that was ordered  
12 legitimately by the customer?

13 MR. STANNER: Object to the form.  
14 Speculation.

15 THE WITNESS: That could be one option,  
16 yes.

17 BY MR. HAWAL:

18 Q Well, do you think it -- let's go to  
19 page 1 of this exhibit. It says: "All: They  
20 gave the 222 form to McKesson on Wednesday. Upon  
21 manager review, it was discovered that the form  
22 had five lines filled out, and the last line  
23 completed box was filled in as a 6. The form was  
24 sent back to the account that night, and I was

1 asked to call them the next morning before the  
2 driver arrived to inform them of the situation. I  
3 talked to the pharmacist and informed her about  
4 her options, either do a new form or she could add  
5 something to line 6 which would make the 222 form  
6 legal. She chose the latter and said she would  
7 fill in that line with 4 x 100 oxycodone/ APAP,  
8 which would make a total of 10 on the form.  
9 Attached is a copy of the form and you can see all  
10 6 lines were filled in by the same person."

11 So if we go to the last page of this,  
12 what happened with McKesson's blessing was because  
13 of the error in shipment, rather than have the  
14 product returned, they had the customer simply add  
15 the four 100 order to conform with the mistake to  
16 make it look like she had originally ordered ten  
17 rather than six.

18 Do you think that's appropriate?

19 MR. STANNER: Objection to the form on  
20 several bases.

21 THE WITNESS: It can be, as long as the  
22 quantities are appropriately documented and  
23 recorded on the proper form and the proper format,  
24 that --

1 BY MR. HAWAL:

2 Q So -- so as a customer --

3 MR. STANNER: You have to let him finish  
4 the answer.

5 MR. HAWAL: I'm sorry.

6 MR. STANNER: You can finish your  
7 answer, Mr. Boggs.

8 BY MR. HAWAL:

9 Q Were you finished or do you need to  
10 finish?

11 MR. STANNER: The last statement was:  
12 "It can be, as long as the quantities are  
13 appropriately documented and recorded on the  
14 proper form and the proper format, that --"

15 THE WITNESS: So that appropriately  
16 documents what was -- what was shipped, yes.

17 BY MR. HAWAL:

18 Q So even though a customer only needed  
19 six 100 bottles of oxycodone, if McKesson makes  
20 the mistake and ships ten, you believe it's  
21 appropriate as a legitimate obligation to avoid  
22 diversion to simply have the customer change their  
23 initial order so it looks like they initially  
24 ordered ten rather than six?

1 MR. STANNER: Objection to the form.

2 THE WITNESS: I'm not -- I'm not sure I  
3 would agree with the characterization of making it  
4 look like. It's a documentation to show what left  
5 McKesson and what the customer received, and that  
6 both parties here are making an attempt to  
7 appropriately document what was shipped and what  
8 was received.

9 BY MR. HAWAL:

10 Q So it's about documentation.

11 A Documentation is a requirement of it.  
12 And if the customer had a legitimate need for  
13 that --

14 Q Well --

15 A -- there was no -- there's nothing  
16 nefarious here.

17 Q -- the customer didn't have a legitimate  
18 need. The customer had a legitimate need for six  
19 100 bottles, not ten. Right? That's what they  
20 ordered.

21 MR. STANNER: Objection to the form.

22 BY MR. HAWAL:

23 Q Right?

24 A That's what they ordered, but that

1 doesn't necessarily mean they -- they wouldn't  
2 have taken more. If they had the option to return  
3 it, and that could have been an option -- so if  
4 the customer didn't think they needed it, they  
5 could have returned it.

6 Q Let me ask you one last question,  
7 Mr. Boggs. By what percentage does your current  
8 salary exceed the salary that you were earning as  
9 a DEA agent in 2011?

10 MR. STANNER: Objection to the form.

11 THE WITNESS: I don't know off the top  
12 of my head.

13 BY MR. HAWAL:

14 Q Well, can you estimate how much more you  
15 earned by a percentage? I'm trying to avoid to  
16 have to ask you your earnings.

17 By percentage, do you earn 200 percent  
18 more, 500 percent more than you did as a DEA agent  
19 as an employee of McKesson?

20 MR. STANNER: Object to the form of the  
21 question.

22 THE WITNESS: I -- I don't know off the  
23 top of my head.

24 BY MR. HAWAL:

1 Q Not even a remote estimate?

2 MR. STANNER: Same objection.

3 THE WITNESS: I'd have to think about it  
4 and come up --

5 BY MR. HAWAL:

6 Q You mentioned that you wanted to retire  
7 and spend more time with your children or  
8 grandchildren, and that didn't work out very well,  
9 did it?

10 MR. STANNER: Objection.

11 THE WITNESS: In what context? I  
12 moved -- I moved from -- I was working and retired  
13 from here in the Washington, D.C. area, and I  
14 moved back to Michigan where they are.

15 BY MR. HAWAL:

16 Q Well, you're working full time.

17 MR. STANNER: Move to strike the  
18 question and the answer.

19 BY MR. HAWAL:

20 Q Right?

21 A I am working --

22 THE REPORTER: I didn't hear what you  
23 said.

24 MR. STANNER: I said move to strike the

1 question and the answer.

2 BY MR. HAWAL:

3 Q You're -- you're working full time  
4 currently, correct?

5 A I am.

6 Q And what is your plan as to how long  
7 you're going to continue working for McKesson? Do  
8 you have any current --

9 MR. STANNER: I'm sorry, Mr. Hawal, are  
10 you really doing an inquiry about whether or not  
11 this man wants to spend time with his  
12 grandchildren? Is that how you want to end the  
13 day?

14 MR. HAWAL: Is -- is that on objection  
15 or -- I don't understand.

16 MR. STANNER: Yeah, it's a standing  
17 objection to the line of inquiry, yes.

18 MR. HAWAL: Thank you.

19 MR. STANNER: How much time is left on  
20 the record?

21 THE VIDEOGRAPHER: 37 minutes, 50 -- 58  
22 seconds.

23 MR. STANNER: You've got eight seconds.

24 MR. HAWAL: Yeah, I'm waiting for an

1     answer.

2                   THE WITNESS:   What was the question?

3     BY MR. HAWAL:

4           Q     How long do you intend to work full  
5     time?

6           A     I don't know.

7           MR. STANNER:   Thank you.

8           MR. HAWAL:   No further questions.

9           THE VIDEOGRAPHER:   Off the record.   The  
10    time is 6:45 p.m.   We're going off the record.

11                   (Whereupon, the deposition of  
12           GARY L. BOGGS was adjourned at  
13           6:45 p.m.)

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1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

2 The undersigned Certified Shorthand Reporter  
3 does hereby certify:

4 That the foregoing proceeding was taken before  
5 me at the time and place therein set forth, at  
6 which time the witness was duly sworn; That the  
7 testimony of the witness and all objections made  
8 at the time of the examination were recorded  
9 stenographically by me and were thereafter  
10 transcribed, said transcript being a true and  
11 correct copy of my shorthand notes thereof; That  
12 the dismantling of the original transcript will  
13 void the reporter's certificate.

14 In witness thereof, I have subscribed my name  
15 this date: January 21, 2019.

16

17

18 \_\_\_\_\_  
LESLIE A. TODD, CSR, RPR

19 Certificate No. 5129

20 (The foregoing certification of  
21 this transcript does not apply to any  
22 reproduction of the same by any means,  
23 unless under the direct control and/or  
24 supervision of the certifying reporter.)

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Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition. It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

1	-	-	-	-	-	-
2	E	R	R	A	T	A
3	-	-	-	-	-	-

4 PAGE LINE CHANGE

5 \_\_\_\_\_

6 REASON: \_\_\_\_\_

7 \_\_\_\_\_

8 REASON: \_\_\_\_\_

9 \_\_\_\_\_

10 REASON: \_\_\_\_\_

11 \_\_\_\_\_

12 REASON: \_\_\_\_\_

13 \_\_\_\_\_

14 REASON: \_\_\_\_\_

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16 REASON: \_\_\_\_\_

17

18 REASON: \_\_\_\_\_

19 \_\_\_\_\_

20 REASON: \_\_\_\_\_

21

22 REASON: \_\_\_\_\_

23

24 REASON: \_\_\_\_\_

ACKNOWLEDGMENT OF DEPONENT

I, \_\_\_\_\_, do hereby  
certify that I have read the foregoing pages, and  
that the same is a correct transcription of the  
answers given by me to the questions therein  
propounded, except for the corrections or changes  
in form or substance, if any, noted in the  
attached Errata Sheet.

\_\_\_\_\_  
GARY L. BOGGS

DATE

Subscribed and sworn to

before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_

Notary Public